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ABSTRACT

The status of civil rights in housing, education, and employment is reviewed in this report. Among the conclusions are: (1) although 1979 court decisions helped to remedy discriminatory housing policies and practices, housing discrimination remains widespread throughout the United States, and decent housing for older persons, minorities, and female-headed households is still undelivered, (2) despite court decisions and legislation, equal educational opportunity is still an unrealized goal: and (3) although affirmative action programs have been increasingly used to improve employment opportunities for minorities and women, and although various laws prohibit discrimination in employment, unemployment levels for minorities and women remain intolerably high. Additional civil rights issues discussed include voting rights, police practices, and immigration. (Author/PLV)

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The State of Civil Rights: 1979

January 1980

U S DEPARTMENT OF HEALTH, EDUCATION & WELFARE
NATIONAL INSTITUTE OF EDUCATION

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A REPORT OF THE UNITED STATES COMMISSION ON CIVIL RIGHTS

U.S. COMMISSION ON CIVIL RIGHTS

The U.S. Commission on Civil Rights is a temporary, independent, bipartisan agency established by Congress in 1957 and directed to:

- Investigate complaints alleging that citizens are being deprived of their right to vote by reason of their race, color, religion, sex, age, handicap, or national origin, or by reason of fraudulent practices;
- Study and collect information concerning legal developments constituting discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, handicap, or national origin, or in the administration of justice;
- Appraise Federal laws and policies with respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, handicap, or national origin, or in the administration of justice;
- Serve as a national clearinghouse for information in respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, handicap, or national origin;
- Submit reports, findings, and recommendations to the President and the Congress.

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LETTER OF TRANSMITTAL

U.S. COMMISSION ON CIVIL RIGHTS
Washington, D.C.
January 1980

THE PRESIDENT
THE PRESIDENT OF THE SENATE
THE SPEAKER OF THE HOUSE OF REPRESENTATIVES

Sirs:

The U.S. Commission on Civil Rights presents this report to you pursuant to Public Law 85-315, as amended.

This report assesses the state of civil rights in 1979. It documents major developments in education, housing, and employment, as well as additional civil rights concerns, and notes that while progress has been made in some areas, renewed efforts are necessary to achieve the goal of equal protection of the laws.

We urge your consideration of the facts presented in this report and ask for your continued leadership in making our Nation one that provides equal opportunity for all its citizens.

Respectfully,

Arthur S. Flemming, *Chairman*
Stephen Horn, *Vice Chairman*
Frankie M. Freeman
Manuel Ruiz, Jr.
Murray Saltzman

Louis Nuñez, *Staff Director*

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Preface

This report by the United States Commission on Civil Rights recognizes the positive steps taken in the quest for equal opportunity but also acknowledges the gap between goals and their limited achievement. The report notes the potential for consolidating past gains and continuing to reinforce the Nation's commitment to making America responsive to the needs of all its citizens.

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Housing

Inflationary pressures in 1979 have seriously affected the ability of many American families to obtain decent and affordable housing. Every financial figure associated with housing has escalated sharply in recent years: sales costs,[1] interest rates,[2] and utilities[3] have spiraled relentlessly upward. Tables 1 and 2 show the upward movement of housing sales costs and interest rates over the past 10 years. Because minorities, women heading families, and older Americans are more likely to have incomes far lower than the general population,[4] their ability to contend with sharply increased housing costs is even more limited. In fact, as the Commission noted in its 1978 study *Social Indicators of Equality for Minorities and Women,* the proportion of income that almost all minority- and female-headed households were forced to spend for housing was actually lower in 1960 than in 1970.[5] Because minority- and female-headed households are much more likely to spend 25 percent or more of their incomes on housing, they have limited funds available for other basic necessities such as food, clothing, transportation, and medical care.[6] Recent government reports have documented a grim pattern indicating that minority families and those headed by women pay disproportionately high costs for flawed, deteriorating, and overcrowded housing.[7] Older Americans, many of them living alone on incomes below the poverty line, were also forced to spend excessive portions of their incomes to meet the cost of housing.[8] As inflation continues, minorities, females, and older Americans are falling farther behind in meeting their housing needs.

Families headed by minorities and women also continue to face the seemingly intractable problem of discrimination in housing. Studies by the U.S. Department of Housing and Urban Development (HUD) during 1979 found that housing discrimination remains widespread throughout the United States[9] and that judicial and executive activity has

[1] *Housing and Development Reporter,* vol. 5, no. 14 (Sept. 5, 1977), p. 292; vol. 6, no. 14 (Sept. 4, 1978), p. 397; and vol. 7, no. 14 (Sept. 3, 1979), p. 305. For instance, between August 1977 and August 1979, the average cost of a new single-family home rose from $54,700 in 1977 to $63,800 in 1978 and to $74,200 in 1979. Thus, in 2 years the average nationwide cost of a new home increased by almost $20,000 (about a 36 percent increase).

[2] Tom Kelly, financial analyst, Mortgage Bankers Association of America, telephone interview, Oct. 25, 1979; and Wayne Hazel, analyst, Office of Economic Research, Federal Home Loan Bank Board, telephone interview, Nov. 15, 1979.
The Mortgage Bankers Association of America reported that as of Oct. 25, 1979, interest rates had risen to 13.25 percent and were expected to go still higher. Mr. Hazel stated that the rise in interest rates had varied somewhat throughout the country but noted that he had received reports of mortgage lending at rates well above 14 percent interest. For further discussion of 1979 mortgage lending problems, see "Interview with Jay Janis, Chairman, Federal Home Loan Bank Board," *U.S. News and World Report,* vol. LXXXVII, no. 20 (Nov. 12, 1979), pp. 51–52.

[3] U.S., Congress, Congressional Research Service, "Increases in the Price of Distillate Fuel Oil No. 2 Especially Home Heating Oil," memorandum by Susan Bodilly, Senior Specialist Division, to Andrew Athey, Jr., counsel, House Subcommittee on Energy and Power, Committee on Interstate and Foreign Commerce, Sept. 4, 1979. Between September 1978 and September 1979 the retail cost of home heating oil is estimated to have risen from 49 cents a gallon to more than 80 cents a gallon. The above-noted analysis found that the rate of fuel cost increase significantly outpaced the rate of inflation.

[4] U.S., Department of Commerce, Bureau of the Census, *Money Income in 1977 of Households in the United States,* series P–60, no. 117 (December 1978), pp. 11–16.

[5] U.S., Commission on Civil Rights, *Social Indicators of Equality for Minorities and Women* (August 1978), pp. 82–84 (hereafter cited as *Social Indicators of Equality).*

[6] Ibid., pp. 84–85.

[7] U.S., Department of Housing and Urban Development, *How Well Are We Housed?* (hereafter cited as *How Well Are We Housed?)* vol. 1, *Hispanics* (January 1979), pp. 7–24; vol. 2, *Female-Headed Households* (December 1978), pp. 1–18; vol. 3, *Blacks* (February 1979), pp. 7–20; and *Social Indicators of Equality,* pp. 75–79.

[8] *How Well Are We Housed?* vol. 4, *The Elderly* (May 1979), pp. 3–6.

[9] U.S., Department of Housing and Urban Development, *Measuring Racial Discrimination in American Housing Markets: The Housing Market Practices*

resulted in only partial progress toward its eradication. As a result, minorities continue to have only limited access to improved housing outside segregated neighborhoods. The Department also reported that an extensive study of sales and rental prices, conducted in 40 metropolitan areas with matched teams of black and white auditors (testers),[10] found:

> definitive evidence that blacks are discriminated against in the sale and rental of housing. Blacks [during the study] were systematically treated less favorably with regard to housing availability, were treated less courteously, and were asked far more information than were whites.[11]

> the cumulative effect of [housing discrimination] on the housing search behavior of blacks may be considerable [and] has important consequences not only on whether blacks can be equal participants in housing markets but also on whether blacks can be equal participants in labor markets, education, and other social institutions.[12]

Another HUD report examined a study conducted in Dallas, Texas, for the "expressed purpose of examining the nature and extent of housing discrimination against Hispanics."[13] HUD reported finding "substantial and fairly consistent evidence of discriminatory housing market practices against Chicanos,"[14] and also reported that they encountered the same forms of housing discrimination as black homeseekers.[15] These included acts by agents such as:

- providing false or incomplete information about apartment availability;
- offering less favorable terms and conditions in the lease;
- withholding information about the apartment or the lease;
- not providing common courtesies; and
- screening the qualifications of apartment seekers in different ways.[16]

Little change occurred during 1979 to indicate an early prospect of improvement in the poor housing and living conditions of millions of Americans. For families headed by minorities and women and for older Americans, 1979 was a year in which their already disproportionately lower incomes were seriously eroded by continuing inflation in the housing marketplace. For those encountering housing discrimination acts, the search for better housing and neighborhoods was particularly difficult and frustrating. Finally, the persistence of discrimination in housing in the United States more than 10 years after the passage of the Fair Housing Act of 1968[17] is one of the most troubling aspects of the past year.

Federal Fair Housing Enforcement

Fair housing enforcement efforts in 1979 generally failed to provide for all Americans the opportunity to seek housing without encountering discrimination. After reviewing the detailed evidence of continuing housing discrimination, HUD concluded:

> efforts to combat racial discrimination have not been completely successful. . . .One can only conclude that the sanctions imposed on discriminators are insufficient, or that the probability of detecting discriminatory behavior is too low, or both.[18]

A study released by the U.S. Commission on Civil Rights in March 1979, *The Federal Fair Housing Enforcement Effort,*[19] found that victims of discrimination and segregation in housing have been largely unprotected by the Federal Government and that HUD and the Department of Justice have failed substantially in their roles in administering and

Survey (May 1979), pp. ES 14–16, 1–30, 200–02 (hereafter cited as *Measuring Racial Discrimination*) and *Discrimination Against Chicanos in the Dallas Rental Housing Market* (August 1979), pp. 1–4, 27–35 (hereafter cited as *Discrimination Against Chicanos*).

[10] *Measuring Racial Discrimination,* p. ES 3. HUD offers the following explanation of the auditing (testing) technique used in the study:

> The simulated housing search experiment known as an audit, is a procedure whereby a white individual and a black individual successively visit a given real estate or rental agency in search of housing. Two individuals of the same sex are matched as closely as possible in terms of age, general appearance, income, and family size—that is, in every relevant way except skin color. The two individuals request identical housing and carefully record their respective experiences on standardized reporting forms. The quantity and quality of information and service provided to each are then compared, and any systematic difference in treatment accorded black auditors and white auditors is presumed to be because of race.

For a more extensive examination of the study methodology, see "Manual for Auditors," an appendix to *Measuring Racial Discrimination.*

[11] Ibid., p. ES 2.

[12] Ibid., p. 200.

[13] *Discrimination Against Chicanos,* p. 33.

[14] Ibid.

[15] Ibid., pp. 27–33.

[16] Ibid., p. 6.

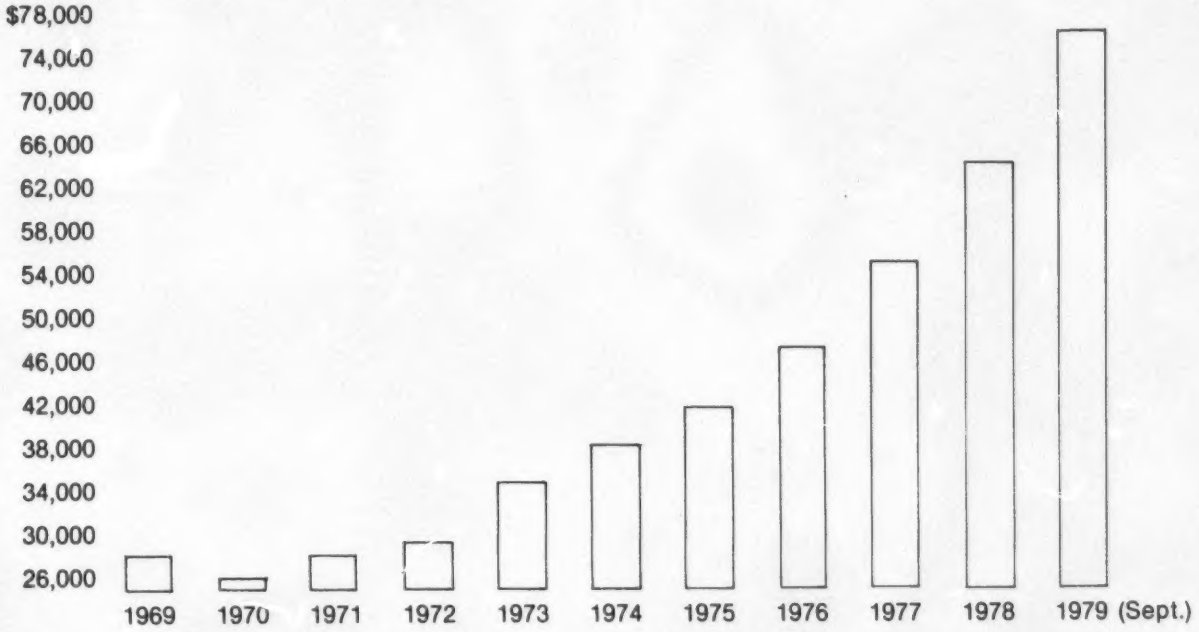
[17] Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §3601–19, 3631 (1976)).

[18] *Measuring Racial Discrimination,* p. ES 29.

[19] U.S., Commission on Civil Rights, *The Federal Fair Housing Enforcement Effort* (March 1979) (hereafter cited as *The Federal Fair Housing Enforcement Effort*).

TABLE 1

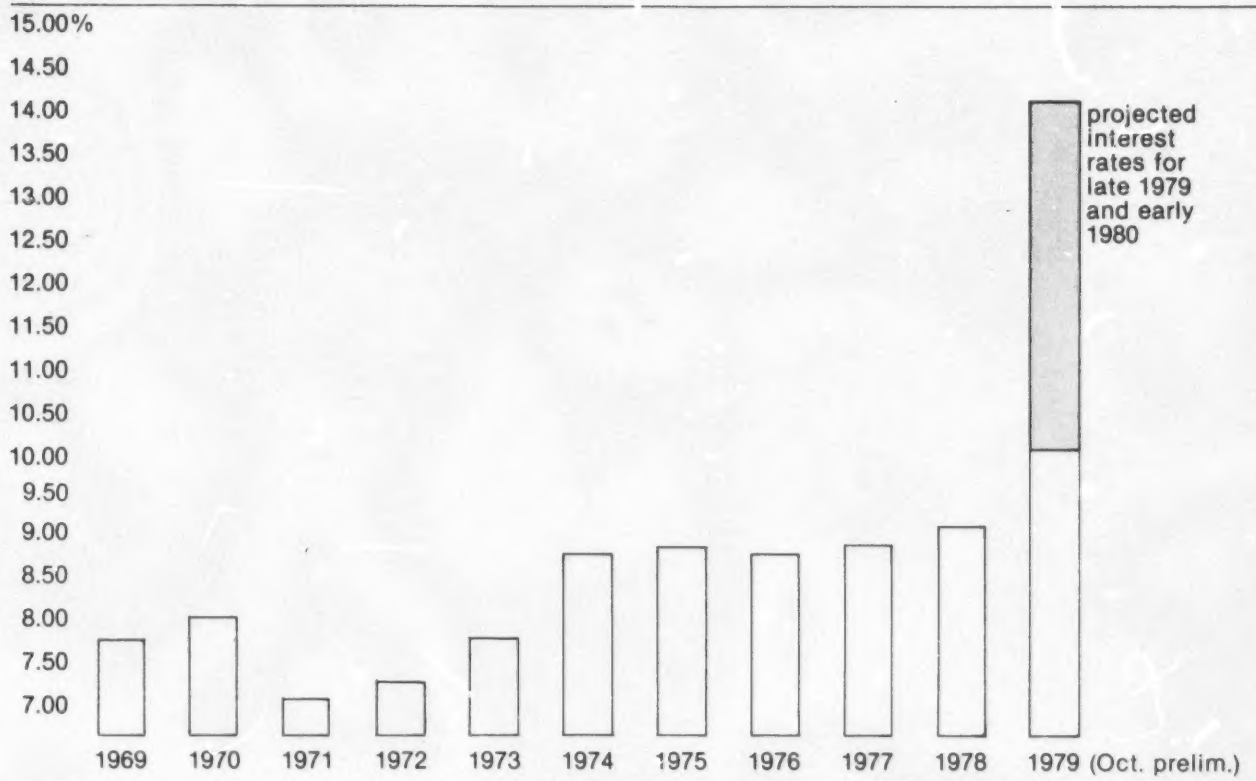
Average Sales Price of New Housing in the United States, 1969-79



Source: William K. Mittendorf, chief, Construction Starts Branch, Bureau of the Census, U.S. Department of Commerce, telephone interview, Nov. 15, 1979.

TABLE 2

Contract Interest Rates for Conventional New Housing in the United States, 1969-79



Source: Wayne Hazel, analyst, Office of Economic Research, Federal Home Loan Bank Board, telephone interview, Nov. 15, 1979. Source for projected interest rates, "Interview With Jay Janis, Chairman, Federal Home Loan Bank Board," *U.S. News and World Report*, vol. LXXXVII, no. 20 (Nov. 12, 1979), pp. 51-52.

enforcing Title VIII of the Civil Rights Act of 1968.[20] Among deficiencies identified are the following:

- Title VIII is a weak law that does not provide effective enforcement mechanisms for ensuring fair housing;
- HUD, which is charged with the overall administration of that law, lacks enforcement authority;
- The various Federal agencies, including HUD and the Department of Justice, that are charged with ensuring equal housing opportunity, have not adequately carried out this duty; and
- The Federal Government's appropriations supporting fair housing have been inadequate.[21]

Patricia Roberts Harris, then Secretary of HUD, responded to these and other findings with the announcement of steps taken by the Department to strengthen fair housing enforcement, including an extensive reorganization in early 1979 of HUD's fair housing functions.[22] Although the effect of these actions has yet to be clearly determined, HUD has moved to strengthen its working relationships with State and local civil rights agencies and to provide technical and financial assistance for improved complaint handling and investigative procedures by these agencies.[23] But HUD has continued to miss its own deadlines for issuing regulations implementing Title VIII of the Civil Rights Act of 1968,[24] despite the fact that such regulations are already 10 years overdue. The Commission has in the past voiced its strong support for a strengthened and adequately funded Federal fair housing program[25] and reiterates that support here.

Fair housing enforcement by the Department of Justice (DOJ) during 1979 reflected change over the previous year.[26] The Housing and Credit Section of the Civil Rights Division was merged into a Special Litigation Section that is expected by the Department "to deal more effectively with the interrelated problems of residential segregation and segregation in public schools."[27] While the Commission recognizes the rationale for this action,[28] it nonetheless notes here its concern that adequate staffing for litigation of fair housing and credit discrimination cases must be ensured. In *The Federal Fair Housing Enforcement Effort,* the Commission noted the small size of the housing and credit staff and characterized its performance as "disappointing" because it has averaged only about 32 cases per year.[29] During fiscal year 1979 the DOJ Civil Rights Division reported filing 26 suits and 2 motions for contempt and supplemental relief under the Fair Housing Act; another 18 consent decrees were entered in housing discrimination cases, and 5 cases[30] were brought under the Equal Credit Opportunity Act (ECOA).[31] The ECOA cases represent the same level of performance as the previous year.

The Commission has in the past emphasized its concerns regarding enforcement action in credit discrimination cases and in fair housing cases involving *sales* of property:

> it is entirely possible that one reason so many minority and female-headed households live in rental apartments is discrimination in mortgage finance practices, or even the perception of minorities and women, based on past experience, that it is fruitless to apply for mortgage

[20] Ibid., p. 231.

[21] Ibid., pp. 230–32.

[22] Patricia Roberts Harris, Secretary, Department of Housing and Urban Development, letter to Arthur S. Flemming, Chairman, U.S. Commission on Civil Rights, Mar. 2, 1979, pp. 1–3 (hereafter cited as Harris Letter of Mar. 2, 1979).

[23] U.S., Department of Housing and Urban Development, *Summary of the HUD Budget: Fiscal Year 1980* (January 1979), p. FHEO-3. See also A.L. Nellum and Associates, *Evaluation of Nine Fair Housing Demonstrations* (May 1979), pp. 1–2. In May 1979, A.L. Nellum and Associates, Washington-based consultants to the Department of Housing and Urban Development, released a preliminary report on a series of fair housing demonstration projects conducted by State civil rights agencies and funded through A.L. Nellum and Associates by HUD. The study examined how State civil rights agencies could improve their effectiveness by adopting fair housing programs intended to curb systemic, institutionalized discrimination. HUD's Fair Housing Assistance Program will fund similar model enforcement programs, as well as innovative data and management information systems. Technical assistance on complaint handling procedures will be another key element of the program.

[24] 44 Fed. Reg. 6674 (Feb. 1, 1979) and 44 Fed. Reg. 45342 (Aug. 1, 1979) list HUD's regulations under development or review. See also, Harris Letter of Mar. 2, 1979, that contains the HUD Secretary's commitment regarding issuance of regulations. As of Oct. 24, 1979, only 3 of 11 promised fair housing regulations had actually been released by HUD despite the earlier commitment of the HUD Secretary to their completion by the end of summer 1979. The three regulations that have been released are:

Compliance Procedures for Affirmative Fair Housing Marketing (44 Fed. Reg. 47012 (1979)) (to be codified in 24 C.F.R. §108).

Nondiscrimination and Equal Opportunity in Housing Under Executive Order 11063 (44 Fed. Reg. 55522 (1979)) (to be codified in 24 C.F.R. §107).

Nondiscrimination in Fair Housing Advertising; Proposed Rulemaking (44 Fed. Reg. 55528 (1979)) (to be codified in 24 C.F.R. §109).

[25] *The Federal Fair Housing Enforcement Effort,* pp. 233–35.

[26] U.S., Department of Justice, *Annual Report of the Attorney General* (1978).

[27] U.S., Department of Justice, *Annual Report of the Attorney General* (1979), draft chapter on General Litigation Section, p. 1 (forthcoming) (hereafter cited as *1979 Annual Report of the Attorney General*).

[28] U.S., Commission on Civil Rights, *Twenty Years After Brown* (1975), pp. 102–03; and *Statement on Metropolitan School Desegregation* (February 1977), pp. 112–19.

[29] *The Federal Fair Housing Enforcement Effort,* pp. 71–72.

[30] *1979 Annual Report of the Attorney General,* draft chapter on General Litigation Section, p. 5.

[31] 15 U.S.C. §§1691–1691f (1976).

credit since in all likelihood it will be denied to them. It is also possible that the dearth of discrimination complaints in such areas as mortgage finance and the sale of housing results from lack of awareness by the victims of these practices that their rights are being violated or their belief that there is no way to prove the suspected discrimination.[32]

The Commission commends the Civil Rights Division of DOJ for its announced decision "to make a greater effort to focus on bringing [housing discrimination] cases that have a high impact in terms of the number of units affected or the issues raised."[33] The Division's interest in coordinating litigative action on related problems (e.g., housing segregation and patterns of school attendance)[34] marks a new and possibly useful future strategy for the Department of Justice.

Fair Housing Amendments of 1979

The Fair Housing Amendments of 1979 (H.R. 5200, S.506) offer an important opportunity to strengthen enforcement of the Fair Housing Act (Title VIII) and to provide the basis for effective, concerted efforts to halt discrimination in the sale and rental of housing and in the mortgaging and insuring of properties. The amendments call for granting cease and desist authority to HUD in Title VIII cases; HUD would have the authority to investigate complaints of housing discrimination, hold administrative hearings, and issue, as warranted, binding orders halting unlawful discriminatory conduct.[35] The Fair Housing Amendments would also:

- permit HUD to initiate investigations of possible discriminatory practices;[36]
- allow HUD to refer individual cases to the Department of Justice for civil action;[37]
- extend coverage of Title VIII protections to those with physical and mental handicaps;[38]
- exempt only rooms rented in single-family units from Title VIII coverage;[39]
- expressly prohibit mortgage loan and hazard insurance redlining, as well as discrimination in the making of real estate appraisals.[40]

The Fair Housing Amendments received direct support for passage in the January 23, 1979, State of the Union message.[41] The Fair Housing Amendments are expected to come to a vote in 1980 and will need the continuing strong support of both the executive branch and advocates of equal housing opportunity for all Americans.

The U.S. Commission on Civil Rights has offered testimony in support of the Fair Housing Amendments.[42] This Commission reiterates that support—a strengthened Fair Housing Act should be regarded as essential by all Americans who are committed to halting and remedying acts of discrimination in housing.

The Federal Financial Regulatory Agencies

The Federal financial regulatory agencies regulate institutions that control an estimated 80 percent of the Nation's mortgage market.[43] Loans by these institutions are vitally important in determining the housing prospects of individual minority and female homeseekers as well as the neighborhoods in which they reside. The four Federal agencies—the Comptroller of the Currency (OCC),[44] the Board of Governors of the Federal Reserve System (FRB),[45] the Federal Deposit Insurance Corporation (FDIC),[46] and the Federal Home Loan Bank Board (FHLBB)[47]—are responsible under Federal law for

[32] *The Federal Fair Housing Enforcement Effort*, p. 70.
[33] *1979 Annual Report of the Attorney General*, draft chapter on General Litigation Section, p. 5.
[34] Joel Selig, deputy chief, General Litigation Section, Civil Rights Division, telephone interview, Nov. 11, 1979.
The Department of Justice obtained consent decrees from two Arkansas public housing authorities that provide for "future assignments [to housing] to be made on a racially integrative basis, in order to overcome the effects of past discrimination in the most expeditious fashion possible." *1979 Annual Report of the Attorney General*, draft chapter on General Litigation Section, p. 4.
See United States v. Housing Authority of City of Helena, No. HC-79-59 (E.D. Ark., filed Sept. 24, 1979; consent decree entered Sept. 24, 1979); United States v. Housing Authority of City of West Helena, No. HC-79-58 (E.D. Ark., filed Sept. 24, 1979; consent decree entered Sept. 25, 1979).
[35] H.R. 5200, 96th Cong., 1st sess., §§810-11 (Comm. print 1979). See also 125 Cong. Rec. H. 1034 (daily ed. Mar. 1, 1979).
[36] H.R. 5200 §810(a)(1).
[37] H.R. 5200 §810(4)(b).
[38] H.R. 5200 §6(g)(1)(2).
[39] H.R. 5200 §5(d)(1).
[40] H.R. 5200 §§6(f), 805.
[41] 125 Cong. Rec. §636 (daily ed: Jan. 23, 1979) (State of the Union message from the President).
[42] Arthur S. Flemming, Chairman, U.S. Commission on Civil Rights, testimony on H.R. 2540 (May 3, 1979) and H.R. 3504 (June 7, 1978).
[43] Mortgage Bankers Association of America, Economics and Research Department, "Mortgage Banking 1976," *Trends Report*, no. 21 (October 1977), p. 5.
[44] 12 U.S.C. §§1-215, 1818 (1976).
[45] 12 U.S.C. §§221-522 (1976).
[46] 12 U.S.C. §§1811-1832 (1976).
[47] 12 U.S.C. §§1421-1449 (1976).

ensuring that the lending institutions they regulate do not discriminate against minority and female homeseekers.[48]

The U.S. Commission on Civil Rights, in its study *The Federal Fair Housing Enforcement Effort,* reviewed actions by the regulatory agencies such as the proposal or issuance of fair housing regulations, the assignment of staff to fair housing responsibilities, the incorporation of fair housing elements in the bank examination process, and the training of examiners for evaluating complaints and compliance with fair housing laws. In its report, the Commission criticized the agencies for failing to make full use of data available under the Equal Credit Opportunity Act and the Home Mortgage Disclosure Act (HMDA), taking insufficient corrective action on Title VIII violations by lenders, and conducting inadequate followup monitoring of lenders that agreed to take remedial actions.[49]

During 1979 the Federal financial regulatory agencies continued to implement agreements they had made in 1977, in settlement of a 1976 suit[50] charging them with failure to act to end discriminatory mortgage lending practices.[51] The agencies continued to improve their equal lending programs with regulations outlining the responsibility of lenders. For example, in November 1979 the Comptroller of the Currency issued in final form a regulation that establishes new recordkeeping requirements and a data collection system for monitoring national bank compliance with Title VIII of the Civil Rights Act of 1968 and the Equal Credit Opportunity Act.[52] The Federal Reserve Board during 1979 amended regulation B (Equal Credit Opportunity Act regulations) to include the activities of certain individuals who may influence the granting of a mortgage loan, such as home builders and real estate brokers.[53]

During 1979 the Comptroller of the Currency and the Federal Deposit Insurance Corporation both moved forward in the hiring of new, specialized civil rights staff. An observer notes, however, that the FDIC has continued to lag in the actual implementation of a data collection and analysis system that would enable the FDIC to monitor the civil rights compliance of regulated lenders.[54]

The FHLBB has issued substantive fair lending regulations, but has been criticized for being unable to enforce them effectively.[55] Among the deficiencies cited by one critic are (1) inadequate civil rights staffing by FHLBB; (2) the fact that existing staff with civil rights responsibilities do not serve at the policymaking level; and (3) problems and shortcomings in staff training on civil rights and fair lending responsibilities. The FHLBB remains the only regulatory agency without examiners specializing in the area of nondiscrimination.[56]

Under its settlement with the National Urban League,[57] the FHLBB set October 1, 1979, as its goal for the establishment of a data collection and analysis system to detect possible discriminatory lending patterns. The FHLBB missed this goal.[58] The former HUD Undersecretary, Jay Janis, recently assumed the Chairmanship of the FHLBB, and expert observers have noted that correction of the deficiencies in the FHLBB's civil rights effort will be the first test of the new chairman's commitment to fair lending enforcement.[59]

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[48] Agency fair housing responsibilities are pursuant to the following:
- Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601-3619, 3631 (1976)).
- Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§2000d-2000d-6 (1970)).
- Equal Credit Opportunity Act (15 U.S.C. §§1691-1691f (1976)).
- Home Mortgage Disclosure Act (12 U.S.C. §§2801-2809 (1976)).
- Community Reinvestment Act (14 U.S.C.A. §§2901-2905 (West. Supp. 1978)).

[49] *The Federal Fair Housing Enforcement Effort,* pp. 76-106.

[50] National Urban League v. OCC, No. 76-0718 (D.D.C., filed Apr. 26, 1976). The suit against the Federal Reserve Board was dismissed on May 3, 1978, without a decision on the merits, based on lack of standing of the plaintiffs. Thus, the FRB is not subject to the provisions of the settlement agreements covering the other regulatory agencies.

[51] Roger S. Kuhn, co-director, Center for National Policy Review, telephone interview, Nov. 19, 1979 (hereafter cited as Kuhn Interview of Nov. 19, 1979). Mr. Kuhn monitors closely the civil rights performance of the four Federal financial regulatory agencies; he served as co-counsel in the 1976 National Urban League suit against the agencies. See his memorandum "Plaintiffs and Others Interested in *National Urban League v. Office of the Comptroller of the Currency,*" Oct. 15, 1979, for his assessment of the civil rights performance of the Federal financial regulatory agencies (hereafter cited as Kuhn Memorandum of Oct. 15, 1979).

[52] 44 Fed. Reg. 63084 (1979) (to be codified in 12 C.F.R. §27).

[53] 44 Fed. Reg. 23813 (1979) (to be codified in 12 C.F.R. §202).

[54] Kuhn Interview of Nov. 19, 1979.

[55] Ibid.

[56] Ibid. and Kuhn Memorandum of Oct. 15, 1979.

[57] National Urban League v. FHLBB, No. 76-0718 (D.D.C. Mar. 22, 1977) (settlement agreement).

[58] Roger S. Kuhn, telephone interview, Oct. 9, 1979.

[59] Kuhn Interview of Nov. 19, 1979; and Zina Greene, consultant on civil rights and fair lending practices, telephone interview, Nov. 16, 1979.

Fair Housing Litigation

A significant case decided during 1979, *Park View Heights Corp. v. City of Black Jack,* [60] centered on efforts beginning in 1969 to build subsidized housing in an unincorporated area of suburban St. Louis, Missouri. White residents of the area responded by incorporating as the city of Black Jack and immediately disallowed the building of multifamily housing. After years of legal proceedings,[61] the U.S. Eighth Circuit Court of Appeals on August 28, 1979, remanded the case to the lower court saying that the city of Black Jack had the obligation to cooperate with the plaintiffs in their efforts to construct low- and moderate-income housing within the city.[62] The decision is significant, since it goes beyond merely requiring a defendant to halt a discriminatory practice. The decision, in fact, sets forth a number of points to guide the district court in fashioning a remedy for the city of Black Jack's violation of the Fair Housing Act. The court stated that the city could be required "to take affirmative steps along with the plaintiff class in its efforts to bring low-cost housing to Black Jack." The court also suggested that joint conferences between the city of Black Jack and the plaintiffs could "allow the parties to reach a definite plan to cooperatively obtain the goal" of building the housing sought by the plaintiffs.[63] The *Black Jack* case suggests that defendants found to have engaged in practices violating the Fair Housing Act, despite the resulting lengthy delays and inflationary cost increases, may nevertheless be required later to facilitate the building of the housing originally sought.[64] In light of the possibility that jurisdictions may act in the future to avoid losses in similar litigation, improved housing opportunities for minorities may be achieved more readily and with the cooperation of local officials.[65]

Two other important cases decided during 1979 that involved low-income housing and minority families are *Resident Advisory Board v. Rizzo* [66] and *Metropolitan Housing Development Corp. v. Village of Arlington Heights.*[67] Both cases have involved lengthy litigation and numerous decisions by the courts. In the *Rizzo* case, a Federal district judge ordered Philadelphia officials, under threat of contempt, to take all steps necessary to ensure the building of low-income townhouses in a predominantly white section of the city. This decision reaffirmed a November 1976 ruling by the same court that city efforts to cancel the project had been racially motivated.[68] The court refused any stay of its 1979 order on the ground that the low-income housing had become even more urgently needed in Philadelphia than it had been in 1976.

In the *Arlington Heights* case, a consent decree ended 7 years of litigation involving attempts by the Village of Arlington Heights, Illinois, to block construction of racially integrated, low- and moderate-income housing within its borders. The village had refused to rezone land needed for the housing. The developers and black plaintiffs filed suit contending that the village's refusal was racially discriminatory. In July 1977 the U.S. Court of Appeals for the Seventh Circuit ruled that the Fair Housing Act required localities to refrain from using zoning policies that had racially discriminatory effects.[69] The case was remanded to the district court for a determination as to the discriminatory effect of the original refusal by the village to rezone. Before the district court acted on the question, the Village of Arlington Heights and the low-income housing developers agreed by consent decree to a modified development in which housing would be located on a site in a nearby unincorporated area. Arlington Heights had zoning authority over this site and agreed to annex and rezone it to permit construction.

Another major case decided in 1979 was *Dunn v. The Midwestern Indemnity Mid-American Fire and Casualty Company.*[70] In this case a Federal district judge ruled that denying or limiting access to property insurance because of the racial composition of a neighborhood, apart from any consideration of risk, is a violation of Title VIII of the Civil Rights Act of 1968. The Ohio court ruled that such a

[60] Park View Heights Corp. v. City of Black Jack, No. 78-1660 (8th Cir., Aug. 28, 1979).
[61] Park View Heights Corp. v. City of Black Jack, 335 F. Supp. 899 (E.D. Mo. 1971) and 467 F.2d 1210-11 (8th Cir. 1972); 454 F. Supp. 1223 (E.D. Mo. 1978).
[62] Park View Heights Corp. v. City of Black Jack, No. 78-1660 at 15 (8th Cir., Aug. 28, 1979).
[63] *Id.* at 14.
[64] Martin Sloane, general counsel, National Committee Against Discrimination in Housing, telephone interviews, Sept. 6, 1979, and Oct. 11, 1979.
[65] Ibid.
[66] Resident Advisory Board v. Rizzo, No. 71-1575 (E.D. Pa., Jan. 11, 1979). This suit was brought after the Philadelphia City Council rejected plans for construction of 120 federally-subsidized, low-income townhouses and after it passed a resolution that called for development of scattered-site housing.
[67] Metropolitan Housing Development Corp. v. Village of Arlington Heights, No. 72-C-1453 (D.N.D. Ill., Apr. 2, 1979).
[68] Resident Advisory Board v. Rizzo, No. 71-1575 (E.D. Pa., Nov. 5, 1976).
[69] Metropolitan Housing Development Corp. v. Village of Arlington Heights, 558 F.2d 1283 (7th Cir. 1977).
[70] Dunn v. The Midwestern Indemnity Mid-American Fire and Casualty Co., No. C-3-78-105 (S.D. Ohio, June 20, 1979).

practice, known as insurance redlining, is subject to the Fair Housing Act, since property insurance is needed to obtain home financing and, ultimately, to obtain full access to the housing market. The court reasoned, "[A] discriminatory denial of insurance would prevent a person economically able to do so from buying a house" and would thus violate the Fair Housing Act. A 1979 study by the Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin Advisory Committees to the U.S. Commission on Civil Rights reported the widespread existence of redlining practices[71] and observed that insurance redlining is a key element in the deterioration of many American cities:

> The insurance industry, of course, is not solely responsible for the development of urban ghettos within metropolitan areas throughout the United States. The decline of municipal services including education, the movement of upper- and middle-income families from cities to suburbs, increasing crime rates, and many other factors are also both causes and effects of urban decline. But the increasing difficulty in obtaining insurance through the voluntary market in certain areas and the overt redlining which does occur do serve as catalysts for neighborhood deterioration.[72]

Finally, the Supreme Court of the United States ruled on April 17, 1979, in *Gladstone Realtors v. Village of Bellwood* [73] that Title VIII provides all victims of housing discrimination with the alternative of filing suit immediately in Federal court *or* of using HUD conciliation procedures, with the right to file suit in Federal court later if conciliation proves unsuccessful. The Village of Bellwood, Illinois, and a number of individual plaintiffs were found by the Court to have standing to file suit under Title VIII as victims of racial steering practices by certain local real estate firms.[74] The Court ruled that racial steering can damage an individual locality by undermining racial stability and property values and can injure individuals living in the area by depriving them of the benefit of living in a stable integrated community.

Programs of the Department of Housing and Urban Development

As the cost of housing has escalated, more and more households headed by minorities and women are being priced out of the market.[75] In 1 year the average price for a new home in the United States rose from $63,200 to $74,200 in 1979, a 17.4 percent increase.[76] These figures, disturbing to all Americans, are of particular concern to the Commission because women and minority men are greatly overrepresented in conditions of poverty.[77] Many minority- and female-headed households continue to have incomes that are only about one-half the income of households headed by white males.[78] The U.S. General Accounting Office (GAO) noted that such lower income households are finding it "increasingly difficult to locate affordable rental units."[79]

The GAO stressed that the current rental vacancy rate of just 5 percent is "dangerously low" and represents the lowest annual rate since the Bureau of the Census began keeping such statistics in 1956.[80] Table 3 shows rental housing vacancy rates between 1969 and 1979. The GAO cited declining rental profits, rising utility costs, condominium conversions, and building abandonment and demolition as contributing to a "crisis" for lower income renters.[81] The GAO noted that if present conditions continue, the result will be an "even greater reliance on Federal programs to deal with the rental housing market crisis particularly as it relates to lower income households."[82] For these families, disproportionately headed by minorities and females, obtaining adequate shelter has increasingly meant turning to the Federal Government as a last resort for aid.[83]

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[71] Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin Advisory Committees to the U.S. Commission on Civil Rights, *Insurance Redlining: Fact Not Fiction* (February 1979), p. 5.

[72] Ibid., p. 8.

[73] Gladstone Realtors v. Village of Bellwood, No. 77-1493, 47 U.S.L.W. 4377 (1979).

[74] Racial steering is a practice used by those sales agents who show homes in white neighborhoods only to whites while showing minorities housing only in minority, transitional, or integrated neighborhoods.

[75] Morton A. Baruch, Deputy Assistant Secretary for Housing, U.S. Department of Housing and Urban Development, remarks before the National Leased Housing Association, 8th Annual Meeting, Washington, D.C., June 15, 1979.

[76] U.S., Department of Commerce, Bureau of the Census, and U.S., Department of Housing and Urban Development, Joint Release CB79-142 (Aug. 8, 1979), table 2.

[77] *Social Indicators of Equality*, p. 65.

[78] U.S., Department of Commerce, Bureau of the Census, *Money Income in 1977 of Households in the United States*, series P-60 (December 1978), table 3, pp. 11-15.

[79] U.S., General Accounting Office, *Rental Housing: A National Problem that Needs Immediate Attention* (Nov. 8, 1979), p. 6.

[80] Ibid., p. 5.

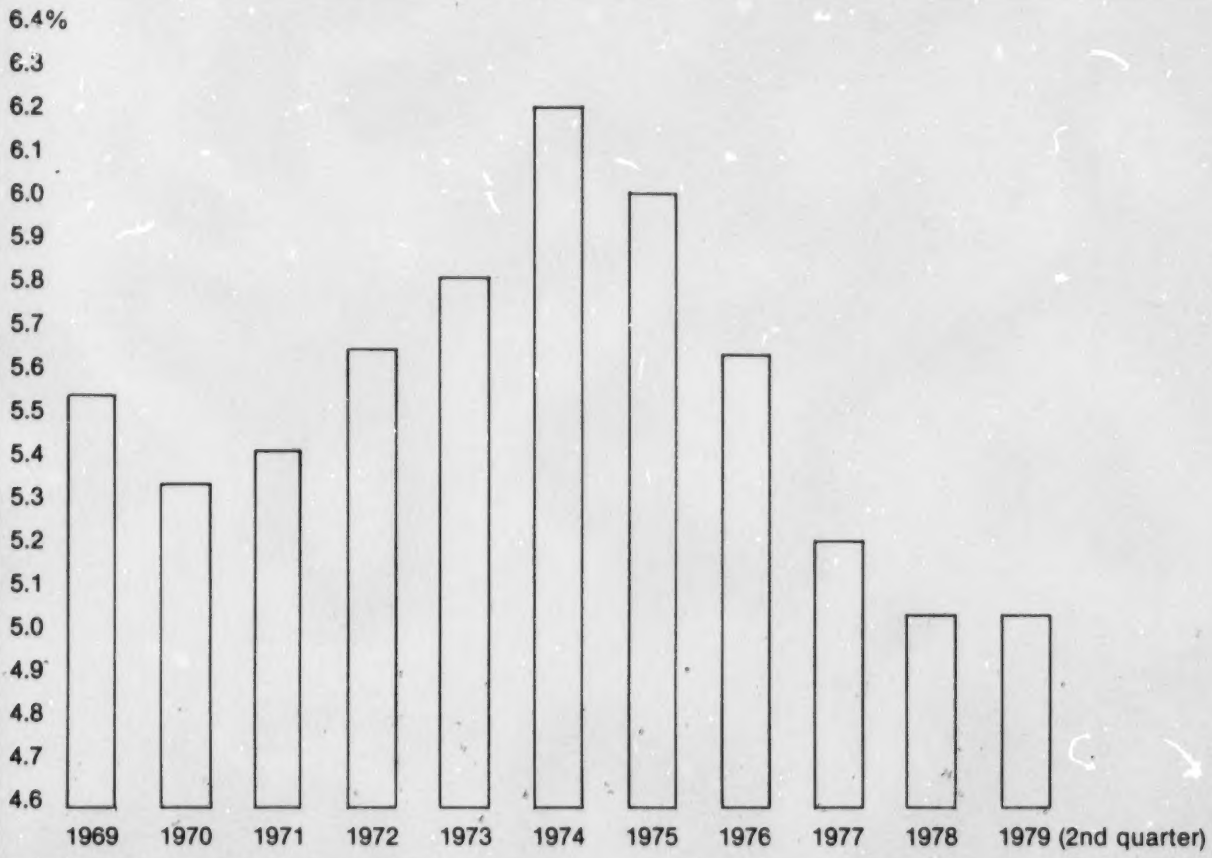
[81] Ibid., pp. ii-iii and 20.

[82] Ibid., p. 21.

[83] Discussion of minority housing conditions and economics is contained in the U.S. Department of Housing and Urban Development's *How Well Are We Housed?* reports that examine the housing and living conditions of

TABLE 3

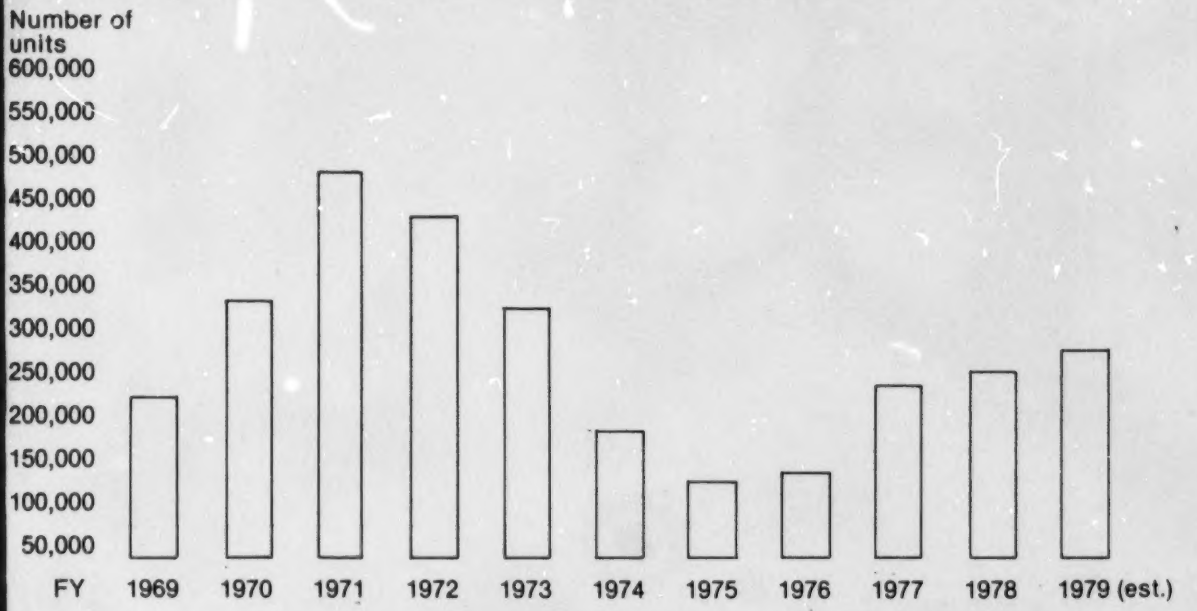
Percent of Rental Housing Vacancy rate in the United States, 1969-79



Source: Mary Harper, survey statistician, Housing Division, Bureau of the Census, U.S. Department of Commerce, telephone interview, Nov. 15, 1979.

TABLE 4

Federally-Assisted Housing Construction and Rehabilitation



Note: The Housing and Urban Development Act of 1968 established a National housing goal of 26 million new or rehabilitated housing units, including 6 million for low- and moerate-income families, to be produced over the next 10 years. For the 10 year period which ended in 1978, the yearly goal would have averaged 600,000 units of assisted housing.

Source: U.S., Department of Housing and Urban Development, *The Tenth Annual Report on the National Housing Goal* (February 1979), p. 27, and Helmuth R. Wiemann, statistician, Management Information Systems Division, Office of the Deputy Assistant Secretary for Multifamily Housing Programs, Department of Housing and Urban Development, telephone interview, Nov. 28, 1979.

The Federal Government, however, has not fulfilled its often-repeated goal of housing every American decently.[84] Congress, in the Housing and Urban Development Act of 1968, established national housing production goals and called for the building of 6 million new units of federally-assisted housing over the next 10 years.[85] The annual goal was 600,000 units of assisted housing, but in no single year has HUD come close to achieving this goal.[86] Table 4 shows federally-assisted housing production beginning with the year 1968.

The response of the Federal Government and Congress to this shortfall has been unfortunate. The 1980 HUD budget request called for $26.7 billion in budget authority for public housing[87] and section 8 housing assistance payments.[88] HUD's estimate was that 300,000 units of housing for low- and moderate-income persons could be provided for this amount.[89] The Congressional Budget Office (CBO), however, disagreed with HUD. CBO estimated that the HUD budget request would produce only about 265,000 units of assisted housing as a result of inflationary cost increases not taken into account by HUD.[90] CBO reduced its estimate further and by mid-October was predicting that 257,000 units of low- and moderate-income housing would be produced under HUD's budget request.[91] This low level of assisted housing production represents a severe setback in efforts to improve housing in urban and rural communities.

The 1980 HUD budget also offers little encouragement to older Americans. The Department's budget[92] called for $800 million for the section 202 elderly housing program[93]—this is the same level as the previous year, despite inflation. The 1980 authorization for the section 202 program by Congress increased this amount to $830 million.[94] When inflation is taken into account, even this figure represents a cutback for the Nation's already hard-pressed older citizens.

The National Low Income Housing Coalition, chaired by former Senator Edward W. Brooke, has charged that since 1976 a "moratorium by attrition" has been carried out against assisted housing, with the rationale that the Government is controlling inflation through reduced Federal expenditures for housing.[95] The coalition commented:

> low income people should not be asked to suffer more than others as a result of efforts to control federal spending. Yet, direct outlays [for subsidized housing] account for only one-fifth of federal expenditures related to housing. The remainder is in the form of tax expenditures—primarily homeowner deductions. We do not challenge the need for these deductions. But we submit it is inconsistent and unjust to attempt to control only those housing expenditures which benefit low income people. . . .[96]

Hispanics, blacks, female-headed households, and older Americans. It is notable that the housing of American Indians is generally considered to be the worst in the United States. Many Indians living both on and off reservations are still unable to obtain decent and affordable housing. For examination of Indian housing problems, see U.S., Senate Select Committee on Indian Affairs, *Report on Indian Housing*, 95th Cong., 2d sess., (Comm. print 1979); U.S., General Accounting Office, *Report to the Congress: Substandard Indian Housing Increases Despite Federal Efforts—A Change Is Needed* (1978); and U.S., Department of Housing and Urban Development, *Annual Report to Congress on Indian and Alaska Native Housing and Community Development Programs* (1978). The housing of many Asian Americans suffers from serious overcrowding, deterioration, and the frequent unavailability of private cooking and sanitary facilities. An extensive discussion of Asian American housing problems appears in "Civil Rights Issues of Asian and Pacific Americans: Myths and Realities," a consultation of the U.S. Commission on Civil Rights (forthcoming).

[84] United States Housing Act of 1937, 50 Stat. 888 (codified in scattered sections of U.S.C. (1979)); Housing Act of 1949 Pub. L. No. 171, 63 Stat. 413, *as amended* (codified at 42 U.S.C. §1441 (1970)); Housing Act of 1954, 68 Stat. 590 (codified in scattered sections of 12, 18, 20, 31, 38, 40 U.S.C. (1970)); Housing and Urban Development Act of 1968, 82 Stat. 476 (codified in scattered sections of 5, 12, 15, 18, 20, 31, 38, 40, 42, 49 U.S.C. (1970)); and Housing and Community Development Act of 1974, 88 Stat. 633, Title I, §104(a) (1974).

[85] 42 U.S.C. §1441a (1970).

[86] U.S., Department of Housing and Urban Development, *The Tenth Annual Report on the National Housing Goal* (February 1979), p. 27.

[87] 42 U.S.C. §§1437-1440 (1976).

[88] Section 8 of the United States Housing Act of 1937, *as amended* by the Housing and Community Development Act of 1974 (42 U.S.C. §1437f (1976)).

[89] U.S., Department of Housing and Urban Development, *Summary of the HUD Budget: Fiscal Year 1980* (January 1979), p. H-1 (hereafter cited as *1980 HUD Budget*).

[90] Martin Levine, analyst, Congressional Budget Office, telephone interviews, Oct. 11, 1979 and Oct. 15, 1979.

[91] Ibid.

[92] *1980 HUD Budget*, p. H-25.

[93] Section 202 of the Housing Act of 1959 (12 U.S.C. §1701q (1976)).

[94] Herbert G. Persil, deputy director, Office of Budget, U.S. Department of Housing and Urban Development, telephone interview, Nov. 15, 1979.

[95] Edward W. Brooke, chairperson, National Low Income Housing Coalition, memorandum for U.S. Senate, July 11, 1979, p. 1.

[96] Ibid., p. 2. The Senate Committee on Banking, Housing, and Urban Affairs oversees HUD operations. During the nomination hearings of Patricia Roberts Harris to be Secretary of the Department of Housing and Urban Development, the committee's chairman, Senator William Proxmire, offered the following discussion of HUD's role in providing publicly assisted housing:

> A prime responsibility of HUD is to provide publicly assisted housing starts for the millions of American families who can't afford a home unless the Government provides some assistance. This is also the heart, the cornerstone of urban development. Employment is important. Education is vital. Crime prevention is essential. But the heart of HUD's responsibility for urban development is in publicly assisted housing.
>
> It is true, of course, that the failure of HUD. . .has been because we didn't have in HUD a Secretary with sufficient knowledge and experience and a solid enough proven record in housing to be able to go to the President and. . .[convince] the President that it was in the

This Commission views the reduction in the number of units of assisted housing as a severe blow to the housing prospects of millions of families headed by minorities and women. Buffeted by both discrimination and inflation, these families find rental housing increasingly difficult to obtain, regardless of condition. The purchase of housing has already ceased to be an option for many. The government's assisted housing programs have historically represented this Nation's commitment to the goal of providing "a decent home and a suitable living environment for every American family."[87] The U.S. Commission on Civil Rights considers the losses in the total number of units of this housing especially unfortunate because many minority- and female-headed households do not yet have acceptable alternatives to overcrowded, excessively costly, and deteriorating housing in racially or ethnically segregated neighborhoods. On October 1, 1979, the U.S. Commission on Civil Rights wrote to the newly confirmed HUD Secretary, Moon Landrieu, stressing the lack of progress toward improved housing conditions for millions of Americans. The Commission commented:

> For many minorities, women, the elderly, and the handicapped, substandard housing is the daily visible reminder of their disproportionately lower incomes. Such problems are offshoots of discriminatory practices which continue to place trying and unfair burdens on these Americans as they seek to obtain better housing for themselves and their families. We believe that the provision of decent, standard housing for every American family and the elimination of discriminatory housing and land use practices are goals which we must continue to pursue.[88]

national economic interest to have a vigorous, expansive housing program.

U.S., Congress, Senate, Committee on Banking, Housing, and Urban Affairs, *Hearing on the Nomination of Patricia Roberts Harris to be Secretary of the Department of Housing and Urban Development*, 95th Cong., 1st sess., 1977, p. 2.

[87] 42 U.S.C. §1441 (1970).

[88] Arthur S. Flemming, Chairman, U.S. Commission on Civil Rights, letter to Moon Landrieu, Secretary, Department of Housing and Urban Development, Oct. 1, 1979.

Education

School Desegregation

In 1979 equal educational opportunity for all children remained an unrealized goal. More than 25 years after the ruling by the Supreme Court of the United States in *Brown v. Board of Education* [1] that declared segregation in public education unconstitutional, nearly half of the Nation's minority children remain in racially isolated schools.[2] In 1979 parents and affected children and their advocates still found themselves in courts and in Congress trying to secure enforcement of this landmark decision.

The Supreme Court of the United States

In 1979 the Supreme Court of the United States reaffirmed its position that dismantling unconstitutional dual school systems may require systemwide remedies. On July 2, 1979, the Court upheld the lower courts' findings that the school boards in both Dayton and Columbus, Ohio, had intentionally operated dual school systems and had continued practices that exacerbated racial segregation.[3] The Court reiterated its 1973 holding in *Keyes v. School District No. 1* [4] that when a court finds purposeful State-imposed segregation in a substantial part of a system, the court may infer that a dual school system exists. While overruling the view that the foreseeability of segregative consequences of school board actions establishes a *prima facie* case of purposeful racial discrimination, the Court held that board actions having the "natural, probable, and foreseeable result" of creating or enhancing segregation are evidence of segregative intent.[5]

Having upheld the findings that both school boards had been intentionally operating dual school systems at the time of *Brown v. Board of Education*, the Court held that they were therefore under a continuing affirmative duty to "effectuate a transition to a racially nondiscriminatory school system."[6] In discussing whether or not the Dayton and Columbus school boards had fulfilled this affirmative duty, the Court stated that:

> The measure of the post- *Brown* conduct of a school board under an unsatisfied duty to liquidate a dual system is the effectiveness, not the purpose, of the actions taken in decreasing or increasing the segregation caused by the dual system.[7]

In these cases, the Supreme Court of the United States found that not only had neither board discharged its duty, but both had taken steps to

[1] 347 U.S. 483 (1954).
[2] U.S., Commission on Civil Rights, *Desegregation of the Nation's Public Schools: A Status Report* (February 1979); U.S., Department of Health, Education, and Welfare, Office for Civil Rights, *Distribution of Students By Racial/Ethnic Composition of Schools 1970–1976, vol. 1: Users' Guide and National and Regional Summaries* (August 1978).
[3] Columbus Board of Education v. Penick, —U.S.—, 99 S. Ct. 2941 (1979); Dayton Board of Education v. Brinkman —U.S.—, 99 S. Ct. 2971 (1979).
[4] 413 U.S. 189 (1973), *remanded*, 521 F.2d 465 (10th Cir. 1975), *cert. denied*, 423 U.S. 1066 (1975).
[5] *Columbus*, at 2950.
[6] *Columbus*, at 2947, quoting Brown v. Board of Education (Brown II), 349 U.S. 294, 301 (1955).
[7] *Dayton*, at 2979.

exacerbate the racial segregation existing at the time of *Brown*. [8] The Court, explaining that the "incremental segregative effect" test does not apply in a situation where the violation has infected the entire system,[9] affirmed systemwide remedies for both cities.

United States Congress

During 1979 Members of Congress introduced amendments and bills that would have the effect of limiting school desegregation progress. Eight major antidesegregation bills or amendments were proposed during 1979. Although it is encouraging that four were defeated, the amendments still represent a major assault on school desegregation. The four defeated proposals were:

(1) *The Collins Amendment,* [10] attached to the House version of the fiscal year 1980 United States Department of Justice appropriations bill, would have prohibited the Justice Department from expending Federal funds to require, directly or indirectly, the transportation of a student to a school other than the school nearest the student's home (except for handicapped students requiring special education).

The amendment was deleted from the Department of Justice appropriations bill in conference committee. If it had become law, however, the amendment would have removed the Department of Justice's authority to enforce court decisions regarding desegregation that require student transportation.

(2) *The Mottl Constitutional Amendment* [11] was a proposal to amend the Constitution to prohibit the compelled attendance of a student at a public school other than the school providing the appropriate course of study nearest the student's home.

Representative Mottl of Ohio obtained the necessary number of signatures to discharge his resolution from committee, bringing it directly to the floor of the House for a vote, where it was defeated.[12] Had this amendment been passed by Congress and ratified by three-fourths of the States, it would virtually have foreclosed the possibility of desegregating larger school districts, where student transportation is a necessary element of meaningful systemwide desegregation.

(3) *The Ashbrook Amendment,* [13] attached to the House version of the Department of Education bill, would have prohibited the new Department from issuing any regulation, rule, interpretation, guideline, or order that required as a condition of eligibility to receive Federal assistance, the transportation of students or teachers to achieve racial balance or to implement school desegregation plans.

The amendment was deleted before final action on the bill. If it had become law, the Department of Education would not have been able to require the transportation of students or teachers to eliminate unconstitutional segregation.

(4) *The Walker Amendment,* [14] also attached to the House version of the Department of Education bill, would have required that no individual could be denied educational opportunities by the use of any ratio, quota, or other numerical requirement related to race, creed, color, national origin, or sex.

This amendment, which also was deleted, would have limited affirmative action policies in the De-

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[8] Both boards were found to have made discriminatory use of faculty assignments, optional and discontiguous attendance zones, and school site selection after 1954. *Columbus,* at 2948; *Dayton,* at 2976.

[9] *Columbus,* at 2951; *Dayton,* at 2981.

[10] H.R. 4392, 96th Cong., 1st sess., §605, 125 Cong. Rec. 5843 (1979), states:

> No part of any appropriation contained in this Act shall be used by the Department of Justice to bring any sort of action to require directly or indirectly the transportation of any student to a school other than the school which is nearest the student's home, except for a student requiring special education as a result of being mentally or physically handicapped.

[11] H.R.J. 74, 96th Cong., 1st sess., §§1 and 2, 125 Cong. Rec. 132 (1979), states:

> Section 1. No student shall be compelled to attend a public school or other than the public school nearest to the residence of such student which is located within the school district in which such student resides and which provides the course of study pursued by such student.
>
> Section 2. The Congress shall have the power to enforce this article by appropriate legislation and to ensure equal educational opportunities for all students.

[12] H.R.J. 74, 96th Cong., 1st sess., §§1 and 2, 125 Cong. Rec. 6428 and 6482 (1979). The large number of signatures on the discharge petition demonstrates that there remains considerable antidesegregation sentiment in the House. U.S., House of Representatives, Democratic Study Group, "Fact Sheet: Constitutional Amendment on Busing," July 16, 1979, p. 10.

[13] H.R. 2444, 96th Cong., 1st sess., §103(c)125 Cong. Rec. 5725 (1979), states:

> No provision of law shall be construed to authorize the Secretary to issue any regulation, rule, interpretation, guideline, or order which requires, as a condition of eligibility to receive Federal assistance, or otherwise, the transportation of students or teachers (or the formulation or adoption of any plan for such transportation) to achieve racial balance in order to carry out a plan for the desegregation of any educational institution, school, or school system.

[14] H.R. 2444, 96th Cong., 1st sess., §101(2), 125 Cong. Rec. 5725 (1979), states:

> There is a continuous need to ensure equal access for all Americans to educational opportunities of a high quality, and that no individual should be denied such education opportunities by rules, regulations, standards, guidelines, and orders which utilize any ratio, quota, or other numerical requirement related to race, creed, color, national origin, or sex.

partment of Education and would have restricted its enforcement of Title VI of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972.

An amendment to the FY 1980 Treasury, Postal Service and General Government Appropriations Act prohibited the use of guidelines to eliminate discrimination in some private schools.[15]

The amendment, which passed, prohibits the Internal Revenue Service (IRS) from implementing proposed guidelines that would have prevented tax exemptions for contributions made to private schools if the schools were found to practice racially discriminatory policies in admitting minority students.[16] The proposed guidelines would have applied to two types of private schools: (1) those that had been determined by a court or Federal agency to be discriminatory; and (2) "reviewable schools," those that did not have significant minority enrollment and were formed or expanded during and because of public school desegregation in the community.[17]

The Commission supported IRS efforts to refuse tax-exempt status for private schools with racially discriminatory admissions practices. The Commission Chairman, testifying before the House Ways and Means Oversight Subcommittee, stated that "the proposed Revenue Procedure [represents] a necessary and long-overdue step forward in Federal civil rights enforcement."[18] The amendment eliminates, for now, a potentially effective mechanism in the Federal Government for helping to ensure that private schools do not become escape hatches from public school desegregation.

Three measures are still pending before the Congress:

(1) *The Eagleton-Biden amendment,*[19] attached to the FY 1980 Labor-HEW Appropriations Act, continues a stipulation contained by the FY '78 and FY '79 appropriations acts. The amendment states that Federal funds may not be used to coerce any school district to force the busing of students, or the abolishment (on account of race, creed, or color) of any segregated school, or the transfer or assignment of students to particular schools over their parents' objections. In addition, no funds could be used to transport students or teachers to overcome racial imbalance or to carry out school desegregation plans.

When this amendment was enacted in FY '78 and '79, it removed HEW's authority to terminate funds to school districts not in compliance with Title VI where compliance would have required transportation beyond the nearest schools. Because HEW could not act, these cases had to be referred to the Department of Justice for litigation.

The Commission is discouraged because this amendment has been a part of the Labor-HEW Appropriations Act for the past 3 years, and there has not been enough congressional support to defeat it. It has become almost a tradition for the Congress, through this amendment, to limit HEW's capacity to enforce school desegregation. It is also disturbing that in 1979 the bill was proposed in committee rather than on the House floor—a tactic that blocked any possible debate and defeat of the amendment.

The Eagleton-Biden restrictions and their impact on school desegregation were evident in 1979. For example, the amendment limited HEW's authority

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[15] Pub. L. No. 96-74 [H.R. 4393] (93 Stat. 577) (Sept. 29, 1979).

[16] "Proposed Revenue Procedure on Private Tax-Exempt Schools," 44 Fed. Reg. 9451 (1979).

[17] Ibid., p. 9452.

[18] U.S., Congress, House, Oversight Committee on Ways and Means, "Proposed Revenue Procedure on Private Tax-Exempt Schools," Statement of Arthur S. Fleming, 96th Cong., 1st sess., Feb. 22, 1979, p. 15.

[19] H.R. 4389, 96th Cong., 1st sess., §§206, 207(a) and (b), and 208, 125 Cong. Rec. 5457 (1979) states:

Section 206. No part of the funds contained in this title may be used to force any school or school district which is desegregated as that term is defined in Title IV of the Civil Rights Act of 1964, Public Law 88-352, to take any action to force the busing of students; to force on account of race, creed or color the abolishment of any school so desegregated; or to force the transfer or assignment of any student attending any elementary or secondary school so desegregated to or from a particular school over the protest of his or her parents or parent.

Section 207.(a) No part of the funds contained in this title shall be used to force any school or school district which is desegregated as that term is defined in Title IV of the Civil Rights Act of 1964, Public Law 88-352, to take any action to force the busing of students; to require the abolishment of any school so desegregated; or to force on account of race, creed, or color the transfer of students to or from a particular school so desegregated as a condition precedent to obtaining Federal funds otherwise available to any State, school district or school.

(b) No funds appropriated in this Act may be used for the transportation of students or teachers (or for the purchase of equipment for such transportation) in order to overcome racial imbalance in any school or school system, or for the transportation of students or teachers (or for the purchase of equipment for such transportation) in order to carry out a plan of racial desegregation of any school system.

Section 208. None of the funds contained in this Act shall be used to require, directly or indirectly, the transportation of any student to a school other than the school which is nearest the student's home, except for a student requiring special education, to the school offering such special education, in order to comply with Title VI of the Civil Rights Act of 1964. For the purpose of this section an indirect requirement of transportation of students includes the transportation of students to carry out a plan involving the reorganization of the grade structure of schools, the pairing of schools, or the clustering of schools, or any combination of grade restructuring, pairing, or clustering. The prohibition described in this section does not include the establishment of magnet schools.

to overcome unlawful school segregation in Chicago, Illinois, where meaningful desegregation would require substantial transportation of students to schools other than the school nearest the student's home.[20] Because of the amendment, the Secretary of HEW, Patricia Roberts Harris, was forced to refer the Chicago matter to the Department of Justice for appropriate action.[21] If this amendment is not deleted from the final version of the FY 1980 Labor-HEW Appropriations Act, it will continue to limit Federal enforcement of equal educational opportunity.

(2) *The Roth-Biden bill* [22] would prohibit courts from ordering the transportation of students on the basis of race, creed, or color without a determination that a discriminatory purpose was a principal motivating factor in the constitutional violations the transportation is intended to correct. Courts would be required to order no more relief than reasonably necessary to adjust student body compositions to what they otherwise would have been if constitutional violations had not occurred. Before issuing such orders, courts would be required to conduct hearings and issue findings of the discriminatory purposes of the violations and the degree to which the violations affected the student composition. Any district court order requiring interdistrict busing would be stayed until all appeals were exhausted or until the order was vacated by the appellate court.

As of October 1979 the bill was still in the Senate Judiciary Committee. If it is enacted into law, however, the likely impact will be to arrest metropolitan desegregation efforts in cities such as Wilmington, Delaware, where an interdistrict remedy has been ordered into effect.

(3) *The National Education Opportunities Act of 1979* [23] would attempt to establish a national policy on equal educational opportunity. The bill provides for the pursuit of desegregation by providing Federal funds for selected State and local educational agencies on a 5-year basis. This Federal support for desegregation would be for those States that develop a comprehensive program to encourage progress in desegregating their school systems.[24] The bill's goal "is to reduce nonvoluntary transportation while increasing reli-

[20] Since 1964 the Chicago Public School System has been cited for violations of Federal regulations governing desegregation of pupils and teachers. The Federal response, prior to 1979, has been to withhold Emergency School Aid Act (ESAA) funds and to seek voluntary compliance rather than impose termination of Federal financial assistance to programs generally. In April 1979, HEW charged Chicago with "deliberate" segregation of students and offered $36 million in Federal funds as incentive to desegregate. An HEW desegregation "feasibility" study, which included mandatory busing, was also submitted to Chicago officials for consideration in August 1979. However, because of the Eagleton-Biden Amendment, HEW could not order Chicago to implement the plan. In September 1979 Chicago initiated a voluntary desegregation effort that was assessed as having "almost no discernible impact on desegregation levels." HEW said that while Chicago had developed plans to end racial assignment of teachers, to end segregated classrooms in integrated schools, to improve bilingual education, and to protect minority teachers, the system had not submitted a plan to end the assignment of students to racially segregated schools. In September 1979 Secretary Patricia Roberts Harris of HEW said that the plan was unacceptable and that negotiations with Chicago had failed. *Education Daily*, vol. 12, no. 185 (Sept. 15, 1979), pp. 1-2 (an independent, daily newsletter on educational events and policies published by Capitol Publ. Inc., Washington, D.C.); Gary Orfield, *The Reconstruction of Southern Education: The Schools and the 1964 Civil Rights Act* (New York: Wiley-Interscience, 1969), pp. 151-207; Board of Education, Chicago, Illinois, "Access to Excellence: Further Recommendations for Equalizing Educational Opportunities" (A plan for stable desegregation), Sept. 19, 1979; Statement of Joseph P. Hannon, general superintendent of schools, Chicago, Ill., Sept. 19, 1979; and *Education Daily*, vol. 12, no. 39 (Feb. 28, 1979), pp. 1-2.

[21] On October 18, 1979, Secretary Harris announced that HEW was referring the matter to the Department of Justice for appropriate action. The referral was to take place within 10 days unless Chicago submitted an acceptable desegregation plan. Although Secretary Harris could allow Chicago additional time before referring the case, she stated that any further delay would not be granted. On Oct. 29, 1979, the case was referred to the Department of Justice. *Education Daily*, vol. 12, no. 201 (Oct. 18, 1979), p. 2.

[22] S. 228, 96th Cong., 1st sess., §§2(a), 2(b), 3(a), and 3(b), 125 Cong. Rec. 644 (1979), states:

Section 2(a) In ordering the transportation of students, the court shall order no more extensive relief than reasonably necessary to adjust the student composition by race, color, or national origin of the particular schools affected by the constitutional violation to reflect what the student composition would otherwise have been had no such constitutional violation occurred.

(b) Before entering such an order, the court shall conduct a hearing and, on the basis of such hearing, shall make specific written findings of (1) the discriminatory purpose of each constitutional violation for which transportation is ordered, and (2) the degree to which the concentration by race, color, or national origin in the student composition of particular schools affected by such constitutional violation presently varies from what it would have been had no such constitutional violation occurred.

Section 3(a) Any order by a district court requiring directly or indirectly the interdistrict transportation of any student on the basis of race, color, or national origin, shall be stayed until all appeals in connection with such order have been exhausted, except that any such stay may be vacated by a majority of a court of appeals panel composed of not less than three members, or a majority of the Supreme Court.

(b) In any case in which such order is stayed pursuant to subsection (a) of this section, any appeals that are to be taken from such order must be commenced by filing a notice of appeal with the clerk of the district court within ten days of the date of the entry of such order. The record on appeal shall be transmitted to the court of appeals within forty days after the filing of the notice of appeal and filed by the clerk of the court immediately upon receipt of the record. The appellant shall serve and file his brief within forty days after the date on which the record is filed. The appellee shall serve and file his brief within thirty days after service of the brief of the appellant. The appellant may serve and file a reply brief within fourteen days after service of the brief of the appellee, except for good cause shown, a reply brief must be filed at least three days before argument. The appeal shall be heard within fifteen days thereafter and a decision shall be rendered within forty-five days after argument. No extension of the time periods shall be allowed, except for extraordinary circumstances.

[23] H.R. 3227, 96th Cong., 1st sess. (1979).

[24] 125 Cong. Rec. 1664 (1979).

ance on innovative methods to alleviate racial isolation chosen and developed locally."[25] The bill provides an opportunity for State and local individuals to provide the leadership necessary to accomplish equal educational opportunity.

If enacted the bill might encourage voluntary desegregation efforts, but there are major flaws in the legislation that weaken its potential effectiveness. The bill places a priority on the reduction of "achievement disparities between racial and socioeconomic groups" at the expense of eliminating racial segregation in the schools.[26] In addition, by failing to require specific desegregation results or compliance with existing civil rights statutes and policies as conditions for funding, the bill sacrifices two important tools for achieving desegregation.

All of these congressional proposals, whether proposed, enacted, or defeated, detrimentally affect efforts to provide equality of educational opportunity. In effect, the Congress has "aided and abetted the obstructionists in the field of desegregation by attempting to make it increasingly difficult to enforce desegregation policies."[27]

The Department of Health, Education, and Welfare

During 1979, HEW attempted to bring State higher education systems into compliance with Title VI of the Civil Rights Act of 1964. As a result of *Adams,* a suit originally filed in 1970 charging HEW with failure to enforce Title VI, HEW was required to develop criteria for examining plans that were to be submitted by six States for desegregating their dual systems of higher education.[28] In 1978 HEW issued criteria requiring plans to establish goals for desegregating student bodies, faculties, staff, and governing boards in each institution within the State system and for strengthening traditionally black institutions,[29] and by March 1979 five of the six States—Arkansas, Florida, Georgia, Oklahoma, and Virginia—had plans accepted by HEW.[30]

North Carolina failed to submit a plan based on the criteria established by HEW.[31] As a result, in March 1979 HEW began administrative enforcement proceedings against North Carolina. These proceedings can lead to a hearing before an administrative law judge, to determine compliance status under Title VI. Customarily, the initiation of Title VI enforcement proceedings has resulted in limited deferral of selected Federal funds. North Carolina filed suit in the U.S. District Court for the Eastern District of North Carolina seeking to enjoin the administrative proceedings, any fund deferrals or terminations of Federal financial assistance, and the implementation of the higher education desegregation criteria established by HEW.[32] The district court denied North Carolina's request to stop the administrative hearing, but ruled that HEW could not defer or terminate Federal funds for the University of North Carolina system until an administrative finding of noncompliance with Title VI had been made.[33] The administrative hearing is scheduled to begin in January 1980.[34]

Title IX

The protection of Title IX of the Education Amendments of 1972[35] was extended to individuals who privately seek relief from sex discrimination in court rather than by first exhausting Federal administrative procedures.

In *Cannon v. University of Chicago,* the Supreme Court of the United States overturned lower court rulings precluding the right of individuals to sue and obtain relief against sex discrimination.[36] Despite the absence of any express authorization in Title IX, the Court said that its legislative history "plainly indicates" that Congress intended for individuals to enforce their rights directly through the courts.[37]

[25] Ibid.

[26] H.R. 3227, 96th Cong., 1st. sess., §§3(1), (2), (3), (4), and (5) (1979), states:

> Section 3. It is the purpose of this Act to—
>
> (1) establish a national policy on equal educational opportunities affirming the decision of the United States Supreme Court in Brown against Board of Education;
>
> (2) provide a viable experimental mechanism for States and their local educational systems to implement meaningfully the national policy on equal educational opportunity;
>
> (3) support efforts on an experimental basis to reduce achievement disparities between racial and socioeconomic groups in the schools, while at the same time set a moral tone within the schools to foster positive attitudes, values, and social behavior between the majority and minority community;
>
> (4) facilitate, where possible, consistent with the objectives stated in paragraph (3), a reduction in the concentration of children from minority groups and low-income families in certain schools, including prevention of resegregation after desegregation has been achieved, primarily by means other than extensive crosstown transportation; and
>
> (5) reduce and eliminate any educational ill effects resulting from the concentration of children from minority groups and low-income families in schools where such concentration persists.

The priority of purpose manifest in the sequence of subsecs. 3(3) and 3(4), together with the intimation of subsec. 3(4) that reducing racial isolation may be inimical to reducing the achievement disparities, is most disturbing.

[27] U.S., Commission on Civil Rights, *Desegregation of the Nation's Public Schools: A Status Report* (February 1979), p. 72.

[28] Adams v. Richardson, 356 F. Supp. 92 (D.D.C.), *mod. and aff'd.,* 480 F.2d 1159 (D.C. Cir. 1973), enforced *sub. nom.* Adams v. Califano, 430 F. Supp. 118 (D.D.C. 1977).

[29] 43 Fed. Reg. 6658 (February 1978).

[30] U.S., Department of Health, Education, and Welfare, Press Conference, Mar. 22, 1979, p. 4.

[31] Ibid., pp. 4–6.

[32] State of North Carolina v. Department of Health, Education, and Welfare, No. 79-217-CIV-5 (E.D.N.C., June 8, 1979).

[33] *Id.* at 7.

[34] *Higher Education Daily,* Aug. 31, 1979, p. 3.

[35] Title IX of the Education Amendments of 1972 prohibits sex discrimination in federally-funded education programs. 20 U.S.C. 1681 (1978).

[36] 99 S. Ct. 1946 (1979).

[37] *Id.* at 1948.

Cannon makes clear that Title IX can now be enforced by individuals as well as by the Federal Government, thus, guaranteeing two avenues of protection against discriminatory practices.

There were also further developments in the implementation of Title IX in the executive branch. The Department of Health, Education, and Welfare issued a policy interpretation about the application of Title IX to intercollegiate athletics.[38]

The purpose of the policy interpretation was to provide a framework for resolving complaints and to provide a definitive statement of the responsibilities under Title IX of institutions receiving Federal financial assistance. The policy interpretation applies specifically to intercollegiate athletic programs, but HEW notes that "the general principles will often apply to club, intramural, and interscholastic athletic programs." [39]

The policy interpretation is in three parts. The first part requires recipient institutions that provide financial assistance to athletes to use a proportionate test in making athletic grants-in-aid, so that female athletes will receive financial assistance in proportion to their percentage as athletes at the institution. For instance, if women constitute 30 percent of the athletes at a recipient institution, then HEW would expect that 30 percent of the financial assistance would be awarded to female athletes. HEW did not require a proportionate number of scholarships to men and women, or scholarships of equal value,[40] but said that it would measure compliance "by dividing the amounts of aid available for members of each sex by the numbers of male and female participants in the athletic program." [41]

The second part of the policy interpretation covers equivalence in other athletic benefits and opportunities listed in the 1975 Title IX implementing regulation.[42] Each of the program components should be "equivalent, that is, equal or equal in effect," [43] but the components need not be identical for men and women.[44] If the components are not equivalent, institutions may still be in compliance if the differences do not have a discriminatory effect.[45]

The third and final part of the policy interpretation concerns the requirement that institutions effectively accommodate the interests and abilities of members of both sexes. The policy interpretation states that in determining compliance HEW will examine the measurement of athletic interests and abilities, the selection of sports, and the level of competition.[46]

The Department of Education

The Department of Education, created by a law signed on October 17, 1979, will be responsible for the majority of the Federal educational programs and activities that previously were lodged in the Department of Health, Education, and Welfare and other agencies.[47] The Department will have a revamped data collection system that, hopefully, will be a more effective tool for obtaining necessary enforcement information.

The Director of the Office for Civil Rights (OCR) will have the authority to enforce all civil rights laws in all programs administered by the Department of Education.[48] Under the Department of Education Organization Act, the Director of OCR will be an Assistant Secretary for Civil Rights, an elevation in authority.[49] The increased status of the Director, a step long recommended by the Commission, can increase the Office's effectiveness within and without the Department. The act also requires the Director of OCR to prepare and transmit an annual report directly to the Congress summarizing enforcement activities and identifying remaining noncompliance problems. This report should help to inform Congress of needed legislation and of additional efforts that can undergird the Department's civil rights enforcement activities.

[38] U.S., Department of Health, Education, and Welfare, Office for Civil Rights, Office of the Secretary, "Title IX of the Education Amendments of 1972; A Policy Interpretation; Title IX and Intercollegiate Athletics," 44 Fed. Reg. 71413.
[39] *Id.*
[40] *Id.* at 71415.
[41] *Id.*
[42] (1) Provision and maintenance of equipment and supplies; (2) scheduling of games and practice times; (3) travel and per diem expenses; (4) opportunity to receive coaching and academic training; (5) assignment and compensation of coaches and tutors; (6) provision of locker rooms, practice and competetive facilities; (7) provision of medical and training services and facilities; provision of housing and dining services and facilities; and (9) publicity.
[43] 44 Fed. Reg. 71415.
[44] *Id.*
[45] *Id.*
[46] *Id.* at 71417.
[47] Department of Education Organization Act, Pub. L. No. 96-84, 93 Stat. 668 (1979). The Department of Education will not be responsible for American Indian or veterans' educational programs, Head Start, or child nutrition programs. The Department of Health, Education, and Welfare will be renamed the Department of Health and Human Services.
[48] The Office for Civil Rights enforces programs pursuant to Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, and sec. 504 of the Rehabilitation Act of 1973. Title VI prohibits discrimination on the basis of race and national origin; Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex; and sec. 504 of the Rehabilitation Act of 1973 prohibits discrimination on the basis of handicap.
[49] Ibid. The Director of the Office for Civil Rights was a GS-18, Schedule C, in HEW. The position will be an Executive Level IV in the Department of Education. U.S., Congress, House, *The Department of Education Organization Act*, Report No. 96-143, Sept. 28, 1979, p. 12.

Equal educational opportunity can only become a reality if all three Federal branches–the courts, the Congress, and the executive–work in concert with State and local governments and community leaders throughout the Nation towards that goal.

Employment

The employment status of minorities and women has long lagged significantly behind that of white men. As shown in the Commission's 1978 report *Social Indicators of Equality for Minorities and Women,* [1] the disparities in unemployment rates of minorities and women and of white males increased between 1970 and 1976. According to recent statistics, these disparities continue to prevail in 1979.[2] Affirmative action programs, designed to correct the present effects of past discrimination, have been attacked recently on the ground that action taken to improve the status of minorities and women discriminates against white males.

Despite these attacks, affirmative action received support in 1979 from the Supreme Court of the United States as well as from the lower courts. Moreover, the Equal Employment Opportunity Commission (EEOC) issued new guidelines on affirmative action and proposed guidelines on religious discrimination in employment. Other developments that signaled continued support for improved employment opportunities were the Comprehensive Employment and Training Act (CETA) amendment to aid displaced homemakers in gaining employment, the Pregnancy Discrimination Act of 1978, and the recent reorganization of the Minority Business Development Agency (MBDA). Although support for affirmative action and improved employment opportunities for minorities and women continues, their unemployment rates are still disproportionately higher when compared with white males.

Affirmative Action

During the 1970s, affirmative action programs have been used increasingly to improve employment opportunities for minorities and women. The first test of the constitutionality of such programs was in the field of education when the Supreme Court of the United States heard the case of *Regents of the University of California v. Bakke.* [3] Although the Court's opinion of affirmative action programs had been long awaited, its decision was somewhat ambiguous. A five to four majority, finding the affirmative action program of the medical school of the University of California at Davis to be illegal, ordered that Allan Bakke be admitted.[4] A slightly different configuration of Justices, by a second five to four majority, found that some forms of race-conscious admission procedures are constitutional and that race can be taken into account when devising affirmative action programs to redress present effects of past race-conscious actions.[5] Because no one opinion in the 1978 *Bakke* decision represented the views of a majority of the Court, the

[1] U.S., Commission on Civil Rights, *Social Indicators of Equality for Minorities and Women* (1978), pp. 28–39 (hereafter cited as *Social Indicators of Equality)*.

[2] The ratios of unemployment rates (for age 16 and over) for black males and black females over that of white males were 2.7 and 3.2, respectively, in 1976, (i.e., the unemployment rate of black males in 1976 was 2.7 times higher than that of white males); 2.2 and 2.6 in 1977, 2.7 and 3.4 in 1978, and 2.7 and 3.4, respectively, in 1979. Thus, since 1976 the unemployment rate of black males has remained close to three times higher than that of white males. The situation has been worse for black females, as their rate has been more than three times higher than that of white males. Ratios for Hispanic males and females were 1.7 and 2.0 in 1977, 1.7 and 2.7 in 1978, and 1.6 and 2.4 in 1979. These ratios are computed from the data provided in U.S. Department of Labor, Bureau of Labor Statistics, *Employment and Earnings,* vol. 25, no. 7 (July 1978), table A–64, p. 64, and vol. 26, no. 7 (July 1979), table A–64, p. 65.

[3] 438 U.S. 265 (1978).

[4] *Id.* at 271.

[5] *Id.* at 328.

permissible reach of affirmative action programs remained uncertain. Less uncertainty was expected to prevail in 1979, since the Supreme Court of the United States had agreed to review a second major affirmative action case, this time in the field of employment.

United Steelworkers v. Weber [6] tested the question of whether it is permissible for a company to establish voluntarily an affirmative action program in the absence of a prior determination of discrimination. In an effort to increase the percentage of blacks in skilled jobs, the Kaiser Aluminum Company established an affirmative action plan at its Gramercy, Louisiana, plant. The plan, established with union support, set aside 50 percent of its training slots for black employees. The plaintiff, Brian Weber, charged that he had been discriminated against on the basis of race because several blacks with less seniority had been admitted into the program. The district court[7] set aside the plan, finding that a preference based on race is discrimination in violation of Title VII of the Civil Rights Act of 1964. The court of appeals upheld this decision.[8]

On appeal, in a five to two decision, the Supreme Court of the United States held that "Title VII's prohibition. . .against racial discrimination does not condemn all private, voluntary, race-conscious affirmative action plans,"[9] and that "the challenged Kaiser-USWA plan falls on the permissible side of the line."[10] In arriving at this decision, the Court conceded that a literal interpretation of Title VII's prohibition against discrimination in employment based on race would support the argument that this race-conscious plan discriminates against white employees and, therefore, arguably is unlawful. The Court decided, however, that the purpose of the act and not its literal language determines the lawfulness of affirmative action plans. The legislative history of the act and the historical context from which the act arose compelled the conclusion, the Court held, that the primary purpose of Title VII was "to open employment opportunities for Negroes in occupations which have traditionally been closed to them. . . ."[11] The Court explained:

> It would be ironic indeed if a law triggered by a Nation's concern over centuries of racial injustice and intended to improve the lot of those who had "been excluded from the American dream so long" constituted the first legislative prohibition of all voluntary, private, race-conscious efforts to abolish traditional patterns of racial segregation and hierarchy.[12]

By focusing on the need to improve the opportunities of the victims of discrimination, the Court interpreted Title VII to encourage voluntary or local remedies to employment discrimination.[13] Although Title VII prohibits the Federal Government from *requiring* employers to give preferential treatment to minorities to redress an imbalance in their work forces,[14] the Court held that its language does not prohibit such *voluntary* efforts.[15]

The Court approved the use of affirmative action as an appropriate voluntary remedy for employment discrimination, even if it is undertaken with no admission of prior discrimination by the employer. It also recognized that the Kaiser plan did not unnecessarily "trammel the interests of white workers," by noting:

> the plan is a temporary measure; it is not intended to maintain racial balance, but simply to eliminate a manifest racial imbalance. Preferential selection of craft trainees at the Gramercy plant will end as soon as the percentage of black skilled craft workers in the Gramercy plant approximates the percentage of blacks in the local labor force.[16]

The *Weber* decision has already had a ripple effect. Two October 1979 decisions in Detroit, Michigan, have relied heavily on *Weber*: one, in upholding[17] an affirmative action program designed to remedy the present effects of past discrimination; the other, in remanding[18] the case for further

[6] 99 S. Ct. 2721 (1979).
[7] 415 F. Supp. 761 (1976).
[8] 563 F.2d 216 (1977).
[9] 99 S. Ct. 2721 (1979), at 2723.
[10] *Id.* at 2724.
[11] *Id.* at 2728.
[12] *Id.*
[13] *Id.*
[14] Section 703(j) of Title VII, 42 U.S.C. §2000e-2(j) provides:
Nothing contained in this subchapter shall be interpreted to require any employer. . .to grant preferential treatment to any. . .group because of the race, color, religion, sex, or national origin of such individuals or groups on account of an imbalance which may exist with respect to the total number or percentage. . .employed. . . .
[15] 99 S. Ct. 2728 (1979), at 2729.
[16] *Id.* at 2730.
[17] Detroit Police Lieutenants and Sergeants Association v. Young, No. 5-71937 and No. 5-72264 (E.D. Mich. 1979), at 79.
[18] Detroit Police Officers Association v. Young, 446 F. Supp. 979 (E.D. Mich. 1978), at 39.

consideration. These two closely related suits were brought by the Detroit Police Officers' Association[19] and the Detroit Police Lieutenants and Sergeants Association.[20] The Police Officers' Association suit concerned the affirmative action program regarding promotions from the rank of patrolman to sergeant,[21] and the Police Lieutenants and Sergeants Association suit concerned an affirmative action program under which sergeants were promoted to lieutenants.[22] In both cases, testimony was presented documenting a long history of discrimination against blacks within the Detroit Police Department.

In the *Detroit Police Officers Association v. Young* suit, the district court found that the affirmative action program, which hastened the promotion of eligible blacks over whites scoring higher on the eligibility roster, violated the equal protection clause of the 14th amendment and Titles VI and VII of the Civil Rights Act of 1964.[23] The court permanently enjoined the Detroit Police Department from operating the affirmative action program.[24]

On appeal, the U.S. Court of Appeals for the Sixth Circuit reversed the judgment of the district court, released the police department from the injunction, dismissed claims that the affirmative action program violated Titles VI and VII,[25] and returned the case to the district court for further consideration of constitutional issues.

In concluding, the court of appeals clearly relied on *Bakke* and *Weber* in distinguishing between claims of discrimination brought by those who have traditionally been discriminated against and those who have not:

> a case involving a claim of discrimination against members of the white majority is not a simple mirror image of a case involving claims of discrimination against minorities. . . .When claims are brought by members of a group formerly subjected to discrimination the case moves with the grain of the Constitution and national policy. A suit which seeks to prevent public action designed to alleviate the effects of past discrimination moves against the grain, and the official action complained of must be subjected to the analysis prescribed in *Weber* and the plurality opinion in *Bakke* which we find controlling.[26]

The court also noted that if the district court finds the affirmative action plan allowable it must provide for its eventual termination in accordance with *Weber,* in which the Supreme Court noted that the affirmative action plan was a temporary measure to eliminate a manifest racial imbalance, not a measure to maintain a given balance.[27]

In *Detroit Police Lieutenants and Sergeants Association v. Young,* the district court noted the plaintiffs' assertion that "there should be no difference between discrimination against whites and discrimination against blacks."[28] The court responded, stating:

> In a perfect world, plaintiffs would be correct. The world has been far from perfect for blacks, however. It has been especially far from perfect for blacks in the Department and blacks who applied to the Department. The city did not act to favor blacks out of malice toward whites, or even capriciousness. It acted to favor blacks because as a class, they had been subject to debilitating discrimination for years on end.[29]

The court also noted that *Weber* should apply with full force to employees in the public sector and concluded:

> In sum, this Court believes that *Weber's* allowance of voluntary affirmative action by private employers subject to Title VII should be extended to public employers subject to Title VII and the Constitution. If anything, the policy arguments are more compelling to allow such affirmative action by public employers than private ones.[30]

Finally, the court concluded that the 50/50 promotional ratio under the affirmative action program is reasonable because it:

> allows large numbers of white officers to be promoted as well as needed black officers. The officers are equally qualified. Race-conscious

[19] Detroit Police Officers Association v. Young, 446 F. Supp. 979 (E.D. Mich. 1978).
[20] Detroit Police Lieutenants and Sergeants Association v. Young, No. 5-71937 and No. 5-72264 (E.D. Mich. 1979).
[21] Detroit Police Officers Association v. Young, 446 F. Supp. 979 (E.D. Mich. 1978).
[22] Detroit Police Lieutenants and Sergeants Association v. Young, No. 5-71937 and No. 5-72264 (E.D. Mich. 1979), at 3. The plaintiffs claimed that it should be illegal for the city to promote blacks over whites solely because of race, especially when whites ranked higher on the list and were, thus, presumably better qualified.
[23] Detroit Police Officers Association v. Young, No. 78-1163 (6th Cir., Oct. 12, 1979), at 1.
[24] *Id.*
[25] *Id.* at 39.
[26] *Id.*
[27] United Steelworkers v. Weber, 99 S. Ct. 2721 (1979), at 2722.
[28] Detroit Police Lieutenants and Sergeants Association v. Young, No. 5-71937 and No. 5-72264 (E.D. Mich. 1979), at 68.
[29] *Id.*
[30] *Id.* at 89-90.

promotions help to remedy present effects of past discrimination and also ensure that the City's operational need for black officers is met. The affirmative action program was necessary to ensure the rapid eradication of past discriminatory effects; nothing less than race-conscious promotions could do this.[31]

Testimony given at the trial of the police lieutenants case supported the view that not only are affirmative action programs demonstrably effective in improving the employment status of those they are designed to help, but they also work to enhance the lives of all our citizens. The Detroit police chief put it succinctly at trial:

> When [citizens] arrive at the precinct stations, they see some black lieutenants sitting behind the desk making decisions on their lives and they feel better about that. They will cooperate with us. They don't feel that we are an army of occupation.[32]

Moreover, testimony showed that black lieutenants directly oversee how persons under arrest are treated, helping to ensure that laws are enforced equally and that arrests are proper.[33] Black lieutenants' leadership in crowd control defused potentially explosive situations and permitted police to treat barricaded gunmen without fear of crowds, according to testimony presented.[34] The chief of police also noted at the trial that harmony had gradually developed between the department and the community, and he attributed this change to the affirmative action program.[35]

Finally, testimony at the trial linked the affirmative action plan to fewer citizen complaints, fewer shootings of police officers, and a lowered crime rate.[36] The police chief further testified that "no police officer has been killed in the line of duty since 1974, when the affirmative action plan was instituted."[37] The court recognized that there are "many difficulties with drawing simple conclusions about difficult problems,"[38] but stated that:

> This Court believes that no reasonable person could fail to conclude that given the history of antagonism between the Department and the black community, the affirmative action plan was a necessary response to what had been an ongoing city crisis.[39]

The *Weber* decision has also had the effect of endorsing Federal activities aimed at securing affirmative action on the part of private employers. The Office of Federal Contract Compliance Programs (OFCCP) of the Department of Labor may now redouble its effort to require private employers with Federal contracts to undertake affirmative action to rectify underutilization of minorities and women. In addition, the Equal Employment Opportunity Commission may continue to encourage employers to develop voluntary affirmative action plans in accordance with its guidelines developed in early 1979.

EEOC Affirmative Action Guidelines

In the absence of a determination by the Supreme Court of the United States regarding the legality of voluntary affirmative action efforts, the EEOC in early 1979 promulgated guidelines, entitled "Affirmative Action Appropriate Under Title VII of the Civil Rights Act of 1964, as Amended."[40] The guidelines which became effective on February 20, 1979, describe affirmative action efforts considered appropriate for compliance with Title VII of the Civil Rights Act of 1964.[41] In issuing the guidelines, the EEOC adopted the position that the Congress, in passing Title VII, clearly intended to encourage voluntary affirmative action and that "Congress did not intend to expose those who comply with the act

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[31] *Id.* at 92.
[32] *Id.* at 100.
[33] *Id.*
[34] *Id.* at 101.
[35] *Id.* at 102.
[36] *Id.* at 103
[37] *Id.*
[38] *Id.* at 104.
[39] *Id.*
[40] 29 C.F.R. §1608, 44 Fed. Reg. 4422 (1979).
[41] While not specifically requiring affirmative action, Title VII empowers the EEOC to investigate charges of discrimination under remedial provisions of section 706 of Title VII. In the process of an investigation, an employer may agree to institute an affirmative action program as part of a settlement. EEOC has also encouraged employers to establish affirmative action plans voluntarily when discrimination has neither been charged nor proved.

Section 706(a) of Title VII provides:

> Whenever it is charged in writing under oath by a person claiming to be aggrieved, or a written charge has been filed by a member of the Commission where he has reasonable cause to believe a violation of this title has occurred (and such charge set forth the facts upon which it is based) that an employer, employment agency, or labor organization has engaged in an unlawful employment practice, the Commission shall furnish such employer, employment agency, or labor organization (hereinafter referred to as the "respondent") with a copy of such charge and shall make an investigation of such charge, provided that such charge shall not be made public by the Commission. If the Commission shall determine, after such investigation, that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion.

to charges that they are violating the very statute they are seeking to implement."[43]

As acknowledged by the EEOC Chair, Eleanor Holmes Norton, the *Bakke* ruling and the then pending *Weber* case caused many employers to think they were in untenable positions. Employers in the process of adopting voluntary affirmative action plans needed clear and concise guidelines that would protect them from reverse discrimination suits.[43] If the Supreme Court of the United States had upheld the decision of the lower courts in *Weber*, EEOC would probably have failed in further efforts to obtain voluntary affirmative action. EEOC interprets the *Weber* decision as both supporting its guidelines and sanctioning plans designed to "eliminate manifest racial imbalance."[44]

A key feature of the guidelines is that an employer does not have to admit prior acts of discrimination, but may take action based on "historic discrimination" not within the employer's control. The guidelines state:

> It is not necessary that the self analysis [of an employer's employment practices] establish a violation of Title VII. This reasonable basis exists without any admission or formal finding that the person has violated Title VII. . . .[45]

The EEOC, however, will investigate charges that a discriminatory act occurred resulting from implementation of an affirmative action plan. If the plan is found to conform to the guidelines, a determination of no reasonable cause will be issued.[46]

The *Weber* and Detroit police decisions, as well as EEOC's affirmative action guidelines, point towards improved employment opportunities for minorities. In addition, other 1979 developments also suggest increased employment opportunities for minorities, women, and persons discriminated against because of their religious affiliation.

CETA Amendment—Displaced Homemakers

In April 1979 the 1978 amendments to the Comprehensive Employment and Training Act (CETA) became effective.[47] One of the amendments provided for the addition of displaced homemakers to CETA's mandate.[48] The Department of Labor regulation defines a displaced homemaker as an individual who:

> (a) Has not worked in the labor force for a substantial number of years but has, during those years, worked in the home providing unpaid services for family members; and
>
> (b)(1) Has been dependent on public assistance or on the income of another family member but is no longer supported by that income; or
>
> (2) Is receiving public assistance on account of dependent children in the home, especially where such assistance will soon be terminated; and
>
> (c) Is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.[49]

In 1979 Congress appropriated $5 million for training and employment services to persons eligible for the new CETA program.[50] According to the Department of Labor, priority is to be given to those with special needs, including eligible applicants 40 years of age or older, minority, or rural residents.[51]

Specific activities under the displaced homemakers program will include vocational and on-the-job training, job referral and placement, and social services such as legal and financial counseling, child care, and health and medical care.[52] A coordinated Federal effort involving various programs in operation at local and State levels should improve services currently being provided to displaced homemakers.

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[43] 29 C.F.R. §1608(a), 44 Fed. Reg. 4425 (1979).
[43] 44 Fed. Reg. 4422 (1979).
[44] U.S., Equal Employment Opportunity Commission, *News*, June 29, 1979, pp. 1 and 3.
[45] 29 C.F.R. §1608.4(b), 44 Fed. Reg. 4427 (1979).
[46] 29 C.F.R. §1608.10(a), 44 Fed. Reg. 4429 (1979).
[47] Comprehensive Employment and Training Act Regulations, 44 Fed. Reg. 19990 (April 1979).
[48] Already covered under the CETA mandate were persons with limited English-speaking ability (29 U.S.C. §871(a)(1)), Native Americans, Alaskan Natives, and Hawaiian Natives (§872(a)(1)), migrant and seasonal farmworkers (§873(b)(1)), disabled and Vietnam veterans (§875), handicapped (§876(b)), youth (§871(a)), and middle-aged workers (§878(a)(1)).
[49] 44 Fed. Reg. 19997 (1979).
[50] 44 Fed. Reg. 61932 (October 1979).
[51] Ibid.
[52] U.S., Department of Labor, Employment and Training Administration, Field Memorandum No. 334-79, "Solicitation for Grant Applications to Provide Employment and Training Opportunities for Displaced Homemakers," June 21, 1979, p. 2.

Minority Business Enterprise

In January 1979 the General Accounting Office (GAO) released a report on the status of minority business firms in local public works projects.[53] The GAO assessed implementation of the provision in the Public Works Employment Act which requires that 10 percent of Federal funds for local public works programs be "expended" for "minority business enterprises."[54] The GAO found some positive results since enactment of the provision: for example, the act has provided minority firms with an increased share of Federal funds,[55] enabled new minority firms to be established, and provided already-existing minority firms with work and greater financial stability.[56]

The GAO, however, also uncovered serious flaws in the implementation of set-aside provisions, including a large number of ineligible firms receiving funds.[57] The GAO found that companies had not been thoroughly investigated for eligibility by the Economic Development Administration (EDA) of the Department of Commerce, the agency responsible for implementing the provision.[58] Almost one-third of the ineligible firms were, in actuality, companies owned by whites using minorities as "fronts" to circumvent the intent of the 10 percent set-aside provision.[59] In 1979 another source reported that "minority fronts" allegedly obtained millions of dollars in Federal contracts that should have been made available to bona fide minority businesses.[60]

Another study highlighted other problems in the Federal Government's programs for minority business development.[61] Ten years after the creation of the agency responsible for the administration's minority business programs, the Office of Minority Business Enterprise (OMBE), the study reported that minority firms were underrepresented in the economy. It found that in 1972 minority companies generated 0.7 percent of all American business receipts.[62] By 1977 this figure had risen to only 2.1 percent.[63]

In October 1979 the Department of Commerce established the new Minority Business Development Agency, which replaces the Office of Minority Business Enterprise.[64] The emphasis of the new agency, which began operation on November 1, 1979, is on helping minority businesses develop into "medium and large-sized" firms that "produce jobs, and stability to communities and improve the overall economy,"[65] although it will aid smaller firms as well.[66]

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[53] U.S., Comptroller General, report to the Congress of the United States, *Minority Firms on Local Public Works Projects–Mixed Results*, No. CED—79-9 (Jan. 16, 1979) (hereafter cited as *Minority Firms)* . Public works projects include construction, renovation, or repair of sites across the Nation to provide transportation and water to drought-stricken areas. Local Public Works Capital Development and Investment Act of 1976, Title I, Pub. L. No. 95-28, May 13, 1977, §102(4), 91 Stat. 116.

[54] The Public Works Employment Act of 1977 contains a provision stipulating that at least 10 percent of the $4 billion of Federal funds authorized for the program be expended for minority firms. See Pub. L. No. 95-28, Title I, §103(b)(2), 91 Stat. 116, (42 U.S.C. §6705(f)(2) (1979)):

> Except to the extent that the Secretary [of Commerce] determines otherwise, no grant shall be made under this Act for any local public works project unless the applicant gives satisfactory assurance to the Secretary that at least 10 per centum of the amount of each grant shall be expended for minority business enterprises. For purposes of this paragraph, the term "minority business enterprise" means a business at least 50 per centum of which is owned by minority group members or, in case of a publicly-owned business, at least 51 per centum of the stock of which is owned by minority group members. For the purposes of the preceding sentence, minority group members are citizens of the United States who are Negroes, Spanish-speaking, Orientals, Indians, Eskimos, and Aleuts.

The legislative history of the MBE provision indicates that its purpose was to help remedy discrimination and to ensure that minority businesses were not excluded from the benefits of local public works programs. By 1979 nearly 30 suits had been filed challenging the constitutionality of the MBE provision. One case challenging the provision, Fullilove v. Kreps, 443 F. Supp. 253 (S.D. N.Y. 1977), *aff'd* 584 F.2d 600 (2d Cir. 1978), *cert. granted*, 99 S. Ct. 2403 (1979), will be decided by the Supreme Court of the United States. Although the district court held that the MBE provision is constitutional and the U.S. court of appeals affirmed, the Supreme Court of the United States is expected to rule on the applicable constitutional standard of review for remedial racial classifications.

[55] Before the provision was enacted, minority firms received 5 percent or less of the Federal contracts for public works projects. In fiscal year 1977, for example, minority firms received only $1.1 billion out of $85.5 billion provided for the projects. Since the enactment of the provision, estimates indicate that minority firms have received up to 16 percent of Federal funds, *Minority Firms*, pp. 7–9.

[56] Ibid., pp. 13–15.

[57] Ibid., p. 25. The Economic Development Administration conducted a special investigation of 1,386 minority firms and found 32 percent "ineligible" for funds. According to EDA's criteria, to be considered eligible for funds a minority firm must have at least "50 percent minority-group ownership requirement." Minority-group members must have "control over management, interest in capital, and earnings commensurate with the percentage of minority ownership claimed. . . .The minority firm must perform significant work or services or provide supplies under the contract and not act merely as a funnel."

[58] Ibid. EDA accepted firms as being "minority" and, thus, eligible for funds, if they appeared on certain "lists" or were "referred." In addition, questionnaires that were filled out by firms were only reviewed through telephone calls. EDA declared firms eligible or ineligible based on a review of those questionnaires.

[59] Ibid., p. 27.

[60] *The Equal Employer*, vol. 3, no. 2, p. 2.

[61] U.S., Department of Commerce, *A New Strategy for Minority Business Enterprise Development* (April 1979).

[62] Ibid., exhibit 2.

[63] Ibid., exhibit 23.

[64] U.S., Department of Commerce, Department Organization Order Series, No. 25-4A, "Minority Business Development Agency," Oct. 26, 1979, p. 1.

[65] U.S., Department of Commerce, Press Release, Aug. 14, 1979, p. 1.

[66] Ibid.

Religious Discrimination in Employment

Although employment discrimination on the basis of religion is prohibited under Title VII of the Civil Rights Act of 1964,[67] some employers maintain personnel practices that adversely affect members of certain religious groups. In response to mounting concern about this and related problems, the U.S. Commission on Civil Rights held a public meeting on religious discrimination in April 1979.[68]

Participants at the consultation reported that serious conflicts exist between employment requirements and religious observances.[69] The most frequent conflicts involve employees who worship on a day other than Sunday being required to work on their Sabbath.[70] Those refusing to comply with employers' attendance requirements have been forced to resign or, in some instances, have been fired because of their religious observances.[71]

This problem has also been addressed by the Equal Employment Opportunity Commission. EEOC reports that employers often refuse to hire applicants once they learn that the applicants will be unavailable to work certain scheduled days for religious reasons.[72]

The Supreme Court of the United States in 1977 ruled in *TWA v. Hardison* that an employer is obligated "to make reasonable accommodation for the religious observances of its employees" unless to do so would create "undue hardship" on the company.[73] Although the Court did not specify the exact nature of "undue hardship," except in terms of financial cost to the employer, it indicated that hardship would occur if accommodation involved "more than a *de minimis* cost" that must be decided on a case-by-case basis.[74]

The EEOC has responsibility for preparing and enforcing guidelines to combat religious discrimination in employment. In 1979 EEOC released proposed guidelines to clarify employers' responsibilities regarding religious preference of employees and to suggest alternatives to accommodate religious preference without "undue hardship."[75] Under the proposed guidelines, after an employee notifies the business or union that accommodation (a change in shift, for example) is necessary, the employer or union would have an obligation to explore possible alternatives. A refusal to accommodate the employee would be acceptable only if the employer or union could demonstrate that to do so would result in an undue hardship for the company, usually defined as monetary cost.[76] The proposed guidelines also offer suggestions or alternatives that may help employers implement religious accommodation. To alleviate scheduling conflicts, for example, EEOC may recommend flexible work schedules,[77] internal transfers, or changes in job assignments.[78]

Additional Employment Opportunities in the Public and Private Sectors

Future opportunities for minorities and women to obtain Federal employment are unclear. Positive developments in 1979 include the Garcia Amendment and possible reevaluation of the Professional and Administrative Career Examination (PACE). Particularly discouraging for many nonveterans, including most working women and many minorities, was the Supreme Court's approval of continued use of veterans' preference in public employment. Unrelated but potentially helpful to women's employment opportunities in both the public and private sectors is the Pregnancy Discrimination Act and subsequent regulations.

The Garcia Amendment

The Garcia Amendment to the Civil Service Reform Act of 1978 became effective on January 11, 1979.[79] This amendment requires the "immediate" development of a continuing recruitment program

[67] Section 703(a), 42 U.S.C. §2000e.

[68] U.S., Commission on Civil Rights, "Religious Discrimination: A Neglected Issue," Washington, D.C., Apr. 9-10, 1979 (hereafter cited as "Religious Discrimination: A Neglected Issue").

[69] W. Melvin Adams, "An Overview of the Religious Discrimination Issues," a paper presented at the consultation on "Religious Discrimination: A Neglected Issue," pp. 7, 9, 16, 19, and 23.

[70] Ibid.

[71] Ibid., pp. 9-12.

[72] EEOC held "informational hearings" to better understand the problems of discrimination based on religion. One issue "repeatedly raised" at those hearings was preselection inquiries into applicants' availability to work. Proposed *Guidelines on Discrimination Because of Religion*, EEOC memorandum, Aug. 1979, pp. 2-3.

[73] 27 S. Ct. 2264 (1977), at 2272.

[74] *Id.* at 2277. "More than a *de minimis* cost" refers to more than a reasonable cost that is imposed on a company complying with religious accommodation.

[75] U.S., Equal Employment Opportunity Commission, proposed *Guidelines on Discrimination Because of Religion*, 29 C.F.R. §1605 2(c) and (d), 44 Fed. Reg. 53707-08 (1979).

[76] Ibid. A hardship is not based on the number of persons who may require the same accommodation.

[77] Ibid.

[78] Ibid.

[79] The Garcia Amendment was first introduced by Rep. Robert Garcia as part of the House version of the Civil Service Reform Act of 1978. Pub. L. No. 95-454, §7151, 92 Stat. 1152.

designed to eliminate employment underrepresentation of minorities[80] in the Federal Government. On July 17, 1979, the Office of Personnel Management (OPM) announced the creation of the Federal Equal Opportunity Recruitment Program (FEORP) and issued draft guidelines providing assistance to other Federal agencies in their efforts to comply with the law.[81]

The amendment requires each agency to develop its own recruitment program[82] based on the underrepresentation of minorities and women in its work force compared with minorities and women in the national civilian labor force.[83] It requires OPM to report yearly on its effectiveness;[84] its first report is due in January 1980.

Reassessment of PACE

In response to mounting concern regarding alleged discriminatory effects of major Federal employment examinations, the House Subcommittee on Civil Service conducted a hearing in May 1979[85] on the use of the Professional and Administrative Career Examination (PACE), an employment test used to fill many profesional positions in the Federal Government.[86] Representatives from civil rights organizations and Federal agencies presented evidence that a racial and ethnic bias is reflected in PACE and that it screens out a disproportionate number of minority applicants, especially blacks and Hispanics, for Federal jobs.[87] Witnesses testifying at the hearing charged that the examination has not been shown to be job related and that minorities are relegated to nonprofessional positions because of PACE's discriminatory effect.[88]

At the hearing, a representative from the General Accounting Office (GAO) reported that PACE excludes black applicants from Federal employment disproportionately in comparison to white applicants.[89] Reacting to the GAO findings, the Commission expressed the need to replace PACE and recommended that alternatives be "thoroughly explored."[90] The Office of Personnel Management also reported that it is searching "for valid alternative means of examining competitive applicants that will have less [adverse] impact on minority applicants" than PACE.[91] The Garcia Amendment may ultimately result in alternatives to PACE through the development of new hiring procedures, recruitment techniques, and entrance tests.

Veterans' Preference

Many States and local governments as well as the Federal Government have legislation requiring that preference be given veterans seeking government employment. The most prevalent form of veterans' preference is the awarding of bonus points in evaluating applicant eligibility to those points already earned on the basis of examination, past experience, and education.[92] When competing for a job with veterans, these bonus points usually mean that the nonveteran is at a disadvantage, because the veteran may have a score equivalent to

[80] Although the amendment specifically states minorities, EEOC, which was instructed to determine what constitutes underrepresentation, examined data on Federal employment and the civilian labor force of groups by race, national origin, and sex in specific grades. Equal Employment Opportunity Commission, "Guidelines for the Development of a Program to Recruit Minorities and Women in the Federal Service," Bulletin No. 720-1, Jan. 17, 1979, pp. 5-6.

[81] U.S., Office of Personnel Management, "Federal Equal Opportunity Recruitment Program," FPM Letter 720-1, July 17, 1979.

[82] Pub. L. No. 95-454, §7151(c)(2)(e), 92 Stat. 1153.

[83] Ibid.

[84] Ibid.

[85] Represented at the hearing were the General Accounting Office, the Office of Personnel Management, the NAACP Legal and Educational Defense Fund, Inc., National IMAGE, Inc., Lawyers Committee for Civil Rights Under Law, and the American Federation of Government Employees.

[86] Normally, about 160,000 people take the PACE examination every year. Of the 80,000 who receive passing grades, only about 6,000 are actually hired. Professional and administrative hearing before the Subcommittee on Civil Service, 96th Cong., 1st. sess., May 15, 1979 (hereafter cited as PACE Hearing).

[87] All of the representatives from the organizations cited evidence that the examination does have discriminatory effects. Carlo Romero, representing National IMAGE, Inc., discussed the PACE test results that included data on Hispanics in Dallas, Texas, and San Francisco, California. The Lawyer's Committee presented data on the discriminatory impact of the examination on blacks and Hispanics in San Francisco and in the South. The NAACP Legal and Educational Defense Fund filed a suit against the use of the PACE examination alleging discrimination. NAACP Legal and Educational Defense Fund, "Statement. . .Before the United States House of Representatives Committee on Post Office and Civil Service Subcommittee, Hearings on the PACE examination," May 15, 1979.

[88] Ibid.; Alan K. Campbell, Director, Office of Personnel Management, and Clifford I. Gould, Deputy Director, Federal Personnel and Compensation Division, statements at the PACE Hearing, May 15, 1979.

[89] Gould Statement, pp. 9-10.

[90] Louis Nunez, Staff Director, U.S. Commission on Civil Rights, letter to Gregory Ahart, Director, Human Resources Division, General Accounting Office, Apr. 11, 1979.

[91] Campbell Statement, pp. 2-3.

[92] Bonus points are not the only form veterans' preference takes. It may also include noncompetitive placement, "top of the register" consideration with or without passover limitations, or reserving certain jobs for veterans only. The Massachusetts statute, for example, provides no bonus points, but requires that veterans passing civil service tests be listed first in order of their scores before any nonveterans (i.e., the lowest ranking veteran would be listed just above the highest ranking nonveteran).

or slightly lower than nonveterans, yet still receive a higher overall score.[93] Veterans' preference has always benefited males disproportionately because the military continues to restrict entry of women into and advancement in the service.[94] Until recently, it has also benefited whites compared to minorities.

In recognition of adverse impact on women, an amendment modifying the use of veterans' preference in the Federal Government's hiring and retention policies was introduced into the Civil Service Reform Act of 1978.[95] The goals of the amendment were to ensure that the use of veterans' preference focused on those veterans who need and deserve it most, to give the Federal Government greater flexibility in selecting qualified candidates, and to afford women and minorities a greater opportunity to compete for and retain Federal jobs.[96] The veterans' preference amendment was rejected by both houses of Congress and is not contained in the final version of the act.

In June 1979 the Supreme Court of the United States upheld a Massachusetts law granting preference to veterans seeking jobs in the State government.[97] Although the Massachusetts law granting veterans' preference has had a severely disproportionate impact, the Supreme Court found that because it was not intended to discriminate on the basis of sex, the law did not violate the equal protection clause of the 14th amendment.[98] The Massachusetts ruling suggests that unless legislative reform is forthcoming, employment opportunities for women and minority nonveterans will continue to be significantly limited by veterans' preference laws.

The Pregnancy Discrimination Act of 1978

The Pregnancy Discrimination Act of 1978[99] requires employers to treat pregnancy, childbirth, and related conditions on the same basis as other medical disabilities that affect employees. The EEOC sex discrimination guidelines, effective April 29, 1979, govern the act's implementation.[100] These guidelines cover such employment practices as hiring, promotion, seniority rights, health insurance, and sick leave. The act's passage, if coupled with effective implementation of the guidelines, should be a positive development for employed women who, in the past, have not received benefits and salary because of pregnancy.[101]

In March 1979 the U.S. Commission on Civil Rights issued a statement supporting the guidelines. The Commission expressed concern, however, that the guidelines may not make it clear to employers that women must be treated on the basis of their ability or inability to work, not merely on the basis of being pregnant or having related medical conditions.[102]

Equal Rights Amendment

Eight years after the U.S. Congress proposed the Equal Rights Amendment (ERA),[103] sex discrimination continued to be a national problem.[104] In employment, for example, ERA, if passed, should provide an impetus for more effective enforcement of laws that prohibit sex discrimination and improve opportunities for women.[105] By August 1979, 35 States had ratified ERA.[106] Three more States must ratify the amendment by June 30, 1982, for it to become part of the Constitution of the United States.[107] ERA's ratification by three-fourths of the

[93] For example, veterans receive 5 or 10 points in addition to normal scores for Federal jobs. 5 U.S.C. §§2108, 3309. Moreover, a disabled veteran goes to the top of the list of eligibles for most Federal positions. 5 U.S.C. §3313.

[94] Amicus Brief for National Organization for Women et al. at 11-A-2, Personnel Administrator of Massachusetts v. Feeney, 99 S. Ct. 2282 (1979).

[95] Pub. L. No. 95-454. The amendment was proposed by Rep. Patricia Schroeder and embodied the executive branch's recommendations for veterans' preference reform.

[96] White House Fact Sheet on Proposed Modification of Veterans' Preference, July 1978.

[97] Personnel Administrator of Massachusetts v. Feeney, 99 S. Ct. 2282 (1979).

[98] The Court said that while the Massachusetts veterans' preference statute may have "adverse consequences" for women, adverse effects were not intended. The Court felt that the statute did not reflect " a purpose to discriminate on the basis of sex." Personnel Administrator of Massachusetts v. Feeney, 99 S. Ct. (1979) at 2294.

[99] Pub. L. No. 97-555, 92 Stat. 2076.

[100] 29 C.F.R. §1604, 44 Fed. Reg. 23804 (1979).

[101] The Pregnancy Discrimination Act of 1978 was a legislative response by the Congress to a December 1976 Supreme Court decision which held that treating pregnancy differently from other disabilities in employee benefit plans did not violate Title VII. General Electric v. Gilbert, 429 U.S. 125 (1976).

[102] U.S., Commission on Civil Rights, "Comments on the Equal Employment Opportunity Commission Guidelines on Discrimination Because of Sex Under Title VII of the Civil Rights Act of 1964 as Amended," Mar. 20, 1979, p. 1.

[103] H.R.J. Res. 208, 92nd Cong., 1st sess., 86 Stat. 1523 (1971). Section 1 of the Equal Rights Amendment states that "Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex." The basic principle of ERA is that the law cannot treat men and women differently solely because of their sex. The amendment gained impetus from the recognition that the legal rights of women are not fully protected under the U.S. Constitution.

[104] U.S., Commission on Civil Rights, *Statement on the Equal Rights Amendment*, December 1978, pp. 5 and 9-12 (hereafter cited as *Statement on ERA)*.

[105] Ibid., p. 12.

[106] ERAmerica, "Status of ERA Ratification," August 1979, p. 1.

[107] The 95th Congress on Oct. 16, 1978, extended the deadline for ratification of ERA from Mar. 22, 1979, to June 30, 1982.

States would result in strengthening Federal and State efforts to eradicate all sex discrimination.[108]

Equal Pay and Age Discrimination

On July 1, 1979, enforcement functions for the Equal Pay Act[109] and the Age Discrimination Act[110] were transferred from the Department of Labor to the Equal Employment Opportunity Commission.[111] The transfer can strengthen the enforcement efforts of the two acts by promoting efficiency and eliminating duplication and inconsistency that have existed in Federal agencies having responsibility for enforcing these laws.[112] To assure that both statutes will be interpreted to provide equal employment opportunity, as intended, EEOC is planning to hold a hearing in January 1980 to identify the extent of wage and age discrimination, particularly the problem of "depressed wages" of jobs held largely by minorities and women.[113] There is evidence that the "earnings gap" between minority and female workers and white males is a major indicator of employment discrimination.[114]

The Current Employment Status of Minorities and Women

Department of Labor statistics in 1979 for blacks and Hispanics[115] show that a significant disparity remains in the employment status between these groups and whites. During the third quarter of 1979, the unemployment rate for black males age 20 and over was 8.3 percent and 5.5 percent for Hispanics, compared with 3.3 percent for white males. For females age 20 and over, the unemployment rate was 11.4 percent for black females and 8.4 percent for Hispanic females, compared with 5.2 percent for white females.[116] For teenagers (16–19 years of age), the unemployment rate for black males was 30.3 percent and for Hispanic male teenagers it was 18.3 percent, compared to 12.8 percent for white males. The unemployment rate for minority teenagers (16–19 years of age) was markedly worse for females than for males. For black females it was 38.6 percent, for Hispanic females it was 21.8 percent, and for white females it was 14.2 percent.[117] These employment statistics are virtually the same as those reported in the third quarter of 1978.[118]

Continuing disparities such as these provide little ground for optimism about improvement in the employment status of minorities and women as compared with white males. Although affirmative action has been supported by the courts in a number of decisions handed down in 1979 and by legislative acts and administrative actions, unemployment continues to be a serious problem for minorities and women. If equality is to be achieved in the forseeable future, the Nation must make a major commitment to the implementation of affirmative action as well as to the new employment initiatives undertaken during 1979.

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[108] *Statement on ERA*, pp. 11–12.

[109] The Equal Pay Act of 1963, Pub. L. No. 88–38, 77 Stat. 56 prohibits employers from paying employees of one sex less than employees of the other sex on jobs that require equal skill, effort, and responsibility and that are performed under similar working conditions.

[110] The Federal Age Discrimination Act, Pub. L. No. 95–256 (H.R. 5383), Apr. 6, 1978, 92 Stat. 189.

[111] Executive Order 12144 (44 Fed. Reg. 37193, June 26, 1979), Sections 1 and 2 of the Federal Reorganization Plan No. 1, 3 C.F.R., 1978 Comp. at 321; 43 Fed. Reg. 19807 (1978) provided for the transfer of certain functions relating to the enforcement of equal pay and age discrimination in employment programs from the Department of Labor to the Equal Employment Opportunity Commission.

[112] Executive Order 12067, June 30, 1978, *Weekly Compilation of Presidential Documents*, July 3, 1978, vol. 14, p. 1212.

[113] 44 Fed. Reg. 63485 (Nov. 2, 1979).

[114] Ibid.

[115] At the present time, labor force information, including data on unemployment, is not published separately for Asian and Pacific Island Americans or American Indians. The U.S. Commission on Civil Rights recognizes this lack of needed information as a serious matter. See, *Social Indicators of Equality*, pp. 2–3. Similar concern was also noted repeatedly by participants at the U.S. Commission on Civil Rights' consultation "Civil Rights Issues of Asian and Pacific Americans: Myths and Realities," Washington, D.C., May 8–9, 1979.

[116] U.S., Department of Labor, Bureau of Labor Statistics, *Employment and Earnings*, vol. 26, no. 10 (October 1979), table A–59, p. 79.

[117] Ibid., table A–64, p. 83.

[118] Ibid., table A–59, p. 79. In 1978, the unemployment rate for black males over 20 was 8.1 percent, for Hispanic males it was 5.7 percent, and for white males it was 3.2 percent. For black females over 20 it was 11.8 percent, for Hispanic females over 20 it was 11.0 percent, and for white females over 20 it was 5.2 percent.
Table A–64 on page 83 shows that teenage employment statistics are also virtually unchanged from last year. The unemployment rate for black males 16 to 19 years of age in the third quarter of 1978 was 32.2 percent, for Hispanic males it was 18.1 percent, and for white males it was 11.9 percent. For black females it was 38.8 percent, for Hispanic females it was 21.8 percent, and for white females it was 14.4 percent.

Additional Civil Rights Concerns

Voting Rights

The 15th amendment to the United States Constitution states that all "citizens of the United States who are qualified by law to vote in any election. . .shall be entitled and allowed to vote. . .without distinction of race, color or previous condition of servitude."[1] To enforce this constitutional mandate, Congress passed the Voting Rights Act of 1965, as amended.[2] Fourteen years after passage of the Voting Rights Act, however, action is still being taken to ensure that voting laws, practices, and procedures are not adversely affecting minority voting rights. The U.S. Department of Justice continues to initiate litigation to protect the voting rights of minority citizens. The Department's enforcement activities have covered a range of voting issues affecting blacks, Hispanics, American Indians, Asian Americans and Alaskan Natives.

The suit filed in 1978 by the U.S. Department of Justice on behalf of American Indians in Thurston County, Nebraska, finally ended in 1979 with the entry of a consent decree.[3] In its suit against the county, the Department of Justice alleged that the county's change in electing county supervisors from a single-member district election system to an at-large election system cancels out, minimizes, and eliminates the voting strength of American Indians. Under the single-member district election system, whereby voters from each district elected a member to the board of supervisors, an American Indian was elected from the district that had a majority-Indian population. Under the at-large system, whereby members to the board are elected on a countywide basis, no American Indian has ever been elected to the Thurston County Board of Supervisors, although American Indians represent 28 percent of the county's population.

The consent decree requires the county to create seven single-member districts and to retain them even after the 1980 census, although reapportionment may be required. Elections are to be held in 1980 for three of the districts, two of which have majority-Indian populations. Extensive publicity of the new single-member district system is required. Finally, the county will be covered under the Voting Rights Act for 5 years.

The Department of Justice also initiated new litigation in 1979 involving the voting rights of American Indians. The Department filed two civil suits alleging that the voting rights of American Indians in San Juan County, New Mexico, had been violated.[4] The Department's suits allege that the county discriminated against American Indians by using an at-large election system to elect county commissioners and by failing to give them voting information in the Navajo language.

The first suit alleges that officials violated the Voting Rights Act when they divided the county into three districts and required each commissioner to be a resident of a particular district, but required

[1] U.S. CONST. amend. XV.

[2] 42 U.S.C. §§1971, 1973–1973bb–1 (1976) (originally enacted as Voting Rights Act of 1965, Pub. L. No. 89–11, 79 Stat. 437) (codified at 42 U.S.C. §§1971, 1973bb–4 (1973)).

[3] United States v. Thurston County, No. 78–0–380 (D. Neb. May 9, 1979) (consent decree).

[4] United States v. San Juan County, No. 79–507–C (D. N.M., filed June 21, 1979) (vote dilution suit); and United States v. San Juan County, No. 79–508–C (D. N.M., filed June 21, 1979) (bilingual suit).

voters to elect commissioners on a countywide rather than on a districtwide basis. The suit also alleges that the districts are malapportioned to the disadvantage of the American Indians, who are primarily concentrated in one district.

The second suit alleges that the county's officials failed to provide oral instructions, assistance, and other voter registration and election information in the Navajo language. The minority language provisions of the Voting Rights Act specifically require that jurisdictions covered under section 203 provide any voting notices, forms, instructions, and assistance in the applicable minority language as well as in English.[5]

There was also litigation involving the voting rights of blacks in the States of Alabama and Mississippi. In July 1979 the Department of Justice filed a civil suit to prevent county officials in Pike County, Alabama,[6] from bypassing the preclearance procedures under section 5 of the Voting Rights Act. Section 5 requires jurisdictions covered by the act to submit new voting laws, practices, and procedures to the Department of Justice or to the U.S. District Court for the District of Columbia prior to their implementation.[7]

In 1974 the county had submitted to the Department of Justice a proposal to change from a single-member district election system for electing county commissioners to an at-large election system with a residency requirement. Under the new election system, each commissioner was required to reside in the district he or she represented, but each of them would be elected on a countywide basis. The Department of Justice objected to the change because it was unable to conclude that the at-large system would not have a discriminatory effect. Nevertheless, the county proceeded with elections for commissioners under the at-large system in 1976 and in 1978. In fact, Pike County also instituted another voting change that had never been submitted to the Department of Justice for approval, a change from the residency district requirement to a numbered post requirement (which requires political candidates to indicate the specific position they seek).

The U.S. District Court for the Middle District of Alabama held that Pike County's at-large election system and its numbered post requirement were unconstitutional. The court declared that the individuals currently on the Pike County Commission were holding their positions illegally. The court ordered the county commission to hold new elections under the old single-member district system unless the Justice Department interposed no objection to another type of election system that the county might wish to enact.

Efforts of black voters in Mississippi to gain effective representation in the Mississippi State Legislature received a setback in 1979 when the U.S. District Court for the District of Columbia approved Mississippi's statutory reapportionment plan.[8] This statutory plan supersedes a court-ordered plan handed down by the U.S. District Court for the Southern District of Mississippi[9] that would have provided a greater opportunity than the statutory plan for blacks to improve their representation in the legislature.

Blacks opposed the statutory plan because it provided for fewer majority-black districts and because it fragmented some previously majority-black or all-black districts. For example, they alleged that some of the majority-black or all-black districts were divided up and paired with majority-white districts. Blacks have decided to appeal the district court's decision to the Supreme Court of the United States.

There is also controversy in DeKalb County, Georgia, over the use of the at-large method of electing school board members as well as over the number of State representatives and size of the 56th district.[10] The 56th district has 75,000 residents who elect three delegates to the Georgia House of Representatives on a districtwide basis. Although the 56th district contains a large percentage (but not a majority) of blacks, blacks complain that the size of the district dilutes their voting strength. In fact, all three delegates from the 56th district are white.

[5] 42 U.S.C. §1973aa-la(c) (1976).

[6] United States v. Pike County, No. 79-245-N (M.D. Ala. Oct. 12, 1979).

[7] 42 U.S.C. §1973(c). Section 5 of the Voting Rights Act requires covered jurisdictions to submit all proposed changes in voting laws, practices, and procedures to the U.S. Attorney General or to the U.S. District Court for the District of Columbia to prove that proposed changes do not have the purpose or effect of discriminating against racial, ethnic, and/or language minorities. If the Attorney General holds that a jurisdictions has not met its burden of proof, a jurisdiction cannot implement the new procedure unless, in an action by the jurisdiction for a declaratory judgment in the U.S. District Court for the District of Columbia, the court holds that the voting change proposed by the jurisdiction is not discriminatory in purpose or effect.

[8] State of Mississippi v. United States, No. 78-1425 (D. D.C. June 1, 1979).

[9] Connor v. Finch, 469 F. Supp. 693 (S.D. Miss. 1979). For history of the case, see Connor v. Finch, 431 U.S. 407 (1977).

[10] "NAACP Says DeKalb Denies Black Voting Rights," *The Atlanta Constitution*, Mar. 25, 1979, p. 12-B.

Black residents want the county to decrease the size of the 56th district, and to establish three single-member districts instead, actions that they believe would increase their voting strength.

Black residents of DeKalb County also complain that the countywide method of electing school board members dilutes their voting strength.[11] Currently all seven members of the DeKalb County School Board are white, but black residents of DeKalb County believe that the establishment of single-member districts would increase the likelihood that blacks would be elected from districts where they constitute a sizable percentage of the residents. The DeKalb County branch of the NAACP has asked the Justice Department to investigate DeKalb County's election system,[12] and the Southern Regional Office of the U.S. Commission on Civil Rights, after its own preliminary investigation, supported the NAACP's complaint. The Department of Justice is now investigating this situation.

The issue of redistricting the city council in Houston, Texas, was also resolved in 1979.[13] In 1977 the Houston City Council annexed predominantly white suburban areas to the city without going through the section 5 preclearance procedures of the Voting Rights Act. The Department of Justice opposed the annexation because the increased white population coupled with the city's at-large election system for electing members of the city council further diluted minority voting strength. Although blacks and Hispanics are 38 percent of the city's population, only one black and no Hispanics were on the Houston City Council.

The Department allowed the city to hold a referendum on August 11, 1979, to permit voters to decide on increasing the city council from 8 members, elected at large, to 14 members, 9 to be elected from single-member districts and 5 to be elected at large. Blacks and Hispanics opposed the 9–5 plan, arguing that a city council of more than 14 members would increase the number of minority council members even more. Nevertheless, the Houston voters approved the plan. After the referendum, the city council approved a redistricting plan that it believed would result in three minority council members—two blacks and one Hispanic. Although the redistricting plan had been opposed by a minority coalition which argued that it was possible for the city to create four districts with predominantly minority populations, the Department of Justice has interposed no objection to the plan. On November 6, 1979, Houston voters did in fact elect three new minority council members to the Houston City Council—two blacks and one Hispanic. As a result of that election, there are now four minorities on the Houston City Council.

Finally, in September 1979 the Federal Election Commission released a study[14] which concluded that there have been insufficient efforts to meet the requirements set forth under the bilingual provisions of the Voting Rights Act. Registration of language minorities and the availability of bilingual personnel at polling places are an exception rather than the rule. In addition, printed materials and voting publicity are rarely made available for language minorities. Overall, the political participation of language minorities has been largely ignored. This may be due to the attitude of most election officials who consider the bilingual needs of such persons "very casually," if at all.[15]

Based on the enforcement activities of the U.S. Department of Justice and on the complaints of minority citizens, it is evident that minorities still need the protection of the Voting Rights Act. The guarantees of the 15th amendment to the United States Constitution are yet to be fully achieved. This Commission supports continued enforcement of the Voting Rights Act of 1965.

Police Practices

In the spring of 1978, the U.S. Commission on Civil Rights undertook a national study on police practices. The purposes of this study were to examine the nature and extent of police misconduct, focusing on the excessive or unnecessary use of force; to identify formal and informal policies and procedures having a bearing on police conduct and discipline; to identify the officials and agencies legally responsible for investigating and resolving allegations of police misconduct; and to evaluate the availability and effectiveness of accountability systems.

[11] Ibid.
[12] Ibid. and "DeKalb Voting Rights Probe Begun," *The Atlanta Constitution*, Apr. 15, 1979, pp. 1-B and 14-B.
[13] *Election Administration Report*, vol. 9, no. 16 (Aug. 15, 1979), p. 3.
[14] U.S., Federal Election Commission, *Bilingual Election Service—Volume III: A State-of-the-Art* (September 1979).
[15] U.S., Federal Election Commission, Press Release, Sept. 12, 1979, p. 2.

In the first phase of the project, which was completed in Washington, D.C., in December 1978, the Commission heard noted authorities in the area of police practices, civil rights and police group spokespersons, and Federal Government officials who discussed significant issues regarding police conduct and accountability.

In 1979 the Commission moved into the second phase of the police project, which included a field investigation of police practices in Philadelphia, Pennsylvania. There, the Commission held two public hearings, the first in February to receive subpenaed documents and the second on April 16 and 17 to receive testimony from community leaders, government officials, police department representatives, and private citizens about the practices and procedures of the Philadelphia Police Department.

In the third phase of the study, the Commission conducted a field investigation of police practices in Houston, Texas. A preliminary hearing was held on June 12 to receive testimony and subpenaed documents from community and Houston Police Department representatives. At a full hearing held on September 11 and 12, a multitude of community representatives, Houston Police Department personnel, State and Federal officials, and private citizens testified.

In the final phase, the Commission will review, synthesize, and evaluate the information gathered during its study and will submit a report to the President and the Congress that will contain its findings and recommendations for changes in Federal law and policies in the area of police practices.

In 1979 the Department of Justice also took action aimed at eliminating police misconduct when it filed suit against the City of Philadelphia charging that its top city and police officials have established policies that have resulted in the widespread and severe abuse of citizens by police officers.[16] The first of its kind against any police department, the suit alleges that the defendants have caused deprivation of the rights of residents of Philadelphia and out-of-State visitors by subjecting them to systematic physical and verbal abuse, summary punishment, and racial and ethnic discrimination.[17] As a remedy, the Department of Justice seeks a court order forbidding the defendants from engaging in the alleged unconstitutional practices in the future. It also seeks the termination of Federal funds until such time as effective reforms are instituted.[18]

On October 30, 1979, a Federal district judge dismissed the major portion of the lawsuit, objecting basically to the role of the Federal Government in the action.[19] The right to bring a lawsuit of this nature, the judge maintained, lies not with the Attorney General but with the aggrieved individual.

Immigration

Concerned about possible civil rights violations in the administration of the immigration laws of the United States, the U.S. Commission on Civil Rights in 1977 undertook a study of current immigration laws and the practices and procedures for its enforcement. Background research and field investigations for the study were completed in 1978. Regional open meetings on immigration issues were convened by the Commission's State Advisory Committees in New York, California, and Texas in February, June, and September 1978, respectively. In November 1978 the Commission held a national hearing in Washington, D.C.

On the basis of the background research, field investigation, and testimony received at the hearing and open meetings, the U.S. Commission on Civil Rights will publish a report that examines civil rights aspects of United States immigration laws and their enforcement. This report is expected to be released in 1980. Among the issues to be discussed are the current immigration selection system, practices and procedures of the U.S. Immigration and Naturalization Service (INS) and the Department of State in administering the immigration laws, employer-sanctions legislation, availability of constitutional rights in the immigration expulsion process, and INS procedures for complaint investigation of its own employees' misconduct.

The Select Commission on Immigration and Refugee Policy, a 16-member commission created by law on October 5, 1978, is chaired by Rev. Theodore Hesburgh and includes Cabinet members, Senators, Representatives, and four Presidential appointees.[20]

[16] United States v. City of Philadelphia, No. 79-2937 (E.D. Pa., filed Aug. 13, 1979).
[17] *Id.*
[18] *Id.*
[19] United States v. City of Philadelphia, No. 79-2937 (E.D. Pa., dismissed in part, Oct. 30, 1979).

[20] The four presidential appointees are Rev. Theodore Hesburgh, president of the University of Notre Dame, South Bend, Ind.; Rose Matsui Ochi, executive assistant to Mayor Tom Bradley of Los Angeles, Calif.; Joaquin Francisco Otero, international vice president of the Brotherhood

The Select Commission is expected to issue its final report on September 30, 1980,[21] that will "study and evaluate existing laws, policies, and procedures governing the admission of immigrants and refugees to the United States and to make such administrative and legislative recommendations to the President and to the Congress as are appropriate."[22] A recent report[23] by the Interagency Task Force on Immigration Policy provides background research for the Select Commission.[24] That research makes clear that issues related to immigration are broad and complex.

of Railway and Airline Clerks; and Cruz Reynoso, associate justice of the Third Appellate District in Sacramento, Calif. U.S., General Service Administration, Office of the Federal Register, *Weekly Compilation of Presidential Documents*, vol. 15, no. 41 (Oct. 15, 1979), p. 1877.

[21] Ibid.

[22] Ibid.

[23] U.S., Departments of Justice, Labor, and State, Interagency Task Force on Immigration Policy, *Staff Report*, (March 1979).

[24] Ibid., p. iii.

Conclusion

The end of the decade found the Nation at a pivotal point as it prepared to meet the challenge of ensuring a discrimination-free life for all its citizens. Some of the developments in 1979 provide a strong impetus for an action agenda that will consolidate the civil rights achievements already attained and also lead the Nation forward on the path toward a society without discrimination. Other developments, however, suggest that much work remains to be done.

Housing

- Although 1979 court decisions help to remedy discriminatory housing policies and practices, Federal efforts have not strengthened Title VIII or its enforcement. Moreover, decent housing for older persons, minorites, and female-headed households remains undelivered.

Education

- The decision of the Supreme Court of the United States in *Cannon* gives an individual the right to sue under Title IX of the Education Amendments, but it is also true that administrative enforcement of Title IX by the Department of Health, Education, and Welfare has not been strong or consistent.

Employment

- Although the *Weber* decision has supplied a legal framework within which voluntary affirmative action programs may be implemented, minority and women's unemployment levels have remained intolerably high.
- Although the Department of Commerce has created the Minority Business Development Agency in an effort to improve Federal support for minority business enterprises, past efforts have not brought minority businesses into the Nation's economic mainstream and only about 2 percent of the Nation's gross business receipts is attributable to minority businesses.

Additional Civil Rights Concerns

- Although the Department of Justice's suit in Philadelphia seeking an end to discriminatory police practices indicated significant Federal concern, a recent Federal court decision apparently has limited the Federal role by declaring that the Department of Justice has no jurisdiction in local police matters.

In the year ahead, we, as a Nation, must work together to:

- Decrease the high level of unemployment among minorities and women;
- Provide more low- and moderate-income housing and end discriminatory practices that preclude minorities, women, and older persons from gaining access to decent housing;
- Work in concert to provide equal educational opportunity;
- End discriminatory police and voting rights practices at the local level; and
- Assure all women their rights as citizens by passing and enforcing the Equal Rights Amendment and by modifying practices such as the veterans' preference that may preclude minorities and women from employment opportunities.

We are at the threshold of the 1980s. The 1960s brought us good laws, and they were enhanced in the 1970s by strong judicial decisions. Yet, the lack of enforcement by the executive branch of Government, the weakening of good legislation by the Congress, and the diminishing will and vision on the part of many Americans are discouraging.

Complex issues and difficult strains tear at the national fabric. If this Nation is to be strong, if we are to be great, and if we are to stand for decency and justice, we must renew our dedication to the promises in the Constitution for equality and justice for all. Although tensions between groups have increased recently, we should not falter, but we should chart a bold course toward the goal of freedom and justice for all.

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